LIBRARY
SUPREME COURT, U.S.

Supreme Court, U.S.
FILED
OCT 18 1971
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

October Term, 1971

No. ..... 71 - 546

LOS ANGELES NEWSPAPER GUILD, LOCAL 69; LOS ANGELES WEB PRESSMEN'S UNION NO. 18; LOS ANGELES MAILERS' UNION NO. 9; LOS ANGELES STEREOTYPERS' UNION NO. 58; LOS ANGELES PAPER HANDLERS' UNION NO. 3; LOS ANGELES TYPOGRAPHICAL UNION NO. 174; INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, DISTRICT LODGE NO. 94; BUILDING SERVICE AND MAINTENANCE EMPLOYEES UNION NO. 399; NEWSPAPER AND PERIODICAL DRIVERS' AND HELPERS' UNION LOCAL 921; and SAN FRANCISCO-OAKLAND NEWSPAPER GUILD, LOCAL 52 of the AMERICAN NEWSPAPER GUILD,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

LOS ANGELES HERALD-EXAMINER, DIVISION OF THE HEARST CORPORATION; and SAN FRANCISCO EXAMINER, DIVISION OF THE HEARST CORPORATION,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

STEPHEN REINHARDT,
Attorney for Petitioners.

Of Counsel:
BODLE, FOGEL, JULBER and REINHARDT,
3540 Wilshire Boulevard,
Los Angeles, Calif. 90010,
GEORGE E. BODLE,
DANIEL FOGEL,
LESTER G. OSTROV,

ANSELL & ANSELL,
BRUNDAGE, NEYHART, GRODIN & BEESON,
BRUNDAGE, NEYHART, MILLER, ROSS & REICH,
GEFFNER & SALZMAN,
ROSENTHAL & LEFF.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6622

SUBJECT INDEX

	Page
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Statute Involved	3
Statement of the Case	5
Reasons for Granting the Writ	9
1. The Court of Appeals Has Decided an Important Question of Federal Law Which Has Not Been, but Should Be, Settled by This Court	9
2. The Court of Appeals Decision Is in Conflict With the Statute, the Intent of Congress, and Applicable Decisions of This Court	12
Conclusion	18

INDEX TO APPENDICES

Appendix A. Judgment .....App. p. 1

Appendix B. Decision and Order .....App. p. 12

TABLE OF AUTHORITIES CITED

Cases	Page
Amalgamated Lithographers of America, etc., 130 NLRB 968, 301 F. 2d 20 (5th Cir. 1962)	9
Bachman Machine Co., 121 NLRB 299, 266 F. 2d 599 (8th Cir. 1959)	9
Baltimore News American Division, The Hearst Corporation, 185 NLRB No. 26	10
Carpet Linoleum, Soft Tile & Resilient Floor Covering Layers, Local Union No. 419 v. NLRB, 429 F. 2d 747 (D. C. Cir. 1970), mod. 176 NLRB No. 120	9
Drivers, Chauffeurs & Helpers Local No. 639, IBT (Poole's Warehousing, Inc.), 158 NLRB 1281	9
General Drivers, etc. Local Union No. 806, IBT (Ada Transit Mix), 130 NLRB 788	9
Intl. Bhd. of Electrical Workers v. NLRB, 181 F. 2d 34 (2d Cir. 1950), aff'd 341 U.S. 694	14
Local 282, Intl. Bhd. of Teamsters (Acme Concrete & Supply Corp.) 137 NLRB 1321	9
J. G. Roy & Sons, 118 NLRB 286, 251 F. 2d 771 (1st Cir. 1958)	9
Miami Newspaper Printing Pressmen's Local 46, 138 NLRB 1346, enf'd 322 F. 2d 405 (D.C. Cir. 1963)	9
NLRB v. Denver Bldg. & Const. Trades Council, 341 U.S. 675 (1951)	10, 11, 13
NLRB v. Intl. Rice Mill Co., 341 U.S. 665 (1951)	10, 11, 12, 13
NLRB v. Local 825, Intl. Union of Operating Engineers, 400 U.S. 297 (1971)	9
National Woodwork Manufacturers Assn. v. NLRB, 386 U.S. 612 (1967)	10, 13

Miscellaneous

93 Congressional Record, pp. 1910, 3954, 4255, 4261, 5040, 5045-5046, 5147, 6603, II Leg. Hist. of the LMRA (1947), pp. 982, 1012, 1055-1056, 1068, 1354, 1365, 1947, 1544 15

93 Congressional Record, pp. 3534, 3542, 3559, A2012, I Leg. Hist. of the LMRA (1947) pp. 613-614, 630, 658, 689 15

93 Congressional Record, p. 4323, II Legislative History of the LMRA (1947), p. 1106 13

95 Congressional Record, p. 8709 14

House of Representatives Conference Report No. 510, 8th Cong., 1st Sess., p. 43, I Leg. Hist. of the LMRA (1947) 15

Senate Report No. 105, 80th Cong., 1st Sess., pp. 7, 8, 22, 54, I Leg. Hist. of the LMRA (1947), pp. 413, 414, 428, 460 15

Senate Report No. 105, 80th Cong., 1st Sess., p. 22, I Leg. Hist. of the LMRA (1947), p. 428 16

Statutes

National Labor Relations Act, Sec. 2(1) 3

National Labor Relations Act, Sec. 8(b)(4)(i) .. 3

National Labor Relations Act, Sec. 8(b)(4)(i)(ii)(B) 4

National Labor Relations Act, Sec. 8(b)(4)(B) 2, 3, 5, 9, 10, 11, 12, 13, 14, 15, 16, 17

National Labor Relations Act, Sec. 8(ii)(B) 3

National Labor Relations Act, Sec. 10(e) 2

National Labor Relations Act, Sec. 10(f) 2, 5

National Labor Relations Act, Sec. 13 4

United States Code, Title 28, Sec. 1254(1) 2

Page

United States Code, Title 29, Sec. 151 3

United States Code, Title 29, Sec. 152(1) 3

United States Code, Title 29, Sec. 158(b)(4)(B) 2, 3

United States Code, Title 29, Sec. 158(ii)(B) 3

United States Code, Title 29, Sec. 158(b)(4)(i) .. 3

United States Code, Title 29, Sec. 158(b)(4)(ii)(B) 4

United States Code, Title 29, Sec. 160(e) 2

United States Code, Title 29, Sec. 160(f) 2, 5

United States Code, Title 29, Sec. 163 4

IN THE

Supreme Court of the United States

October Term, 1971
No. .....

LOS ANGELES NEWSPAPER GUILD, LOCAL 69; LOS ANGELES WEB PRESSMEN'S UNION NO. 18; LOS ANGELES MAILERS' UNION NO. 9; LOS ANGELES STEREOTYPERS' UNION NO. 58; LOS ANGELES PAPER HANDLERS' UNION NO. 3; LOS ANGELES TYPOGRAPHICAL UNION NO. 174; INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, DISTRICT LODGE NO. 94; BUILDING SERVICE AND MAINTENANCE EMPLOYEES UNION NO. 399; NEWSPAPER AND PERIODICAL DRIVERS' AND HELPERS' UNION LOCAL 921; and SAN FRANCISCO-OAKLAND NEWSPAPER GUILD, LOCAL 52 of the AMERICAN NEWSPAPER GUILD,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

LOS ANGELES HERALD-EXAMINER, DIVISION OF THE HEARST CORPORATION; and SAN FRANCISCO EXAMINER, DIVISION OF THE HEARST CORPORATION,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Petitioners, Los Angeles Newspaper Guild, Local 69; Los Angeles Web Pressmen's Union No. 18; Los Angeles Mailers' Union No. 9; Los Angeles Stereotypers' Union No. 58; Los Angeles Paper Handlers' Union No. 3; Los Angeles Typographical Union No. 174; International Association of Machinists and Aero-

space Workers, District Lodge No. 94; Building Service and Maintenance Employees Union No. 399; Newspaper and Periodical Drivers' and Helpers' Union Local 921; and San Francisco-Oakland Newspaper Guild, Local 52 of the American Newspaper Guild, pray that a writ of certiorari issue to review a final judgment of the United States Court of Appeals for the Ninth Circuit, entered in the above entitled case on July 21, 1971, denying petitioners' petition for review and granting enforcement of an order of the National Labor Relations Board under Sections 10(e) and 10(f) of the National Labor Relations Act, as amended, 29 U.S.C. Section 160(e) and (f).

Opinions Below.

The Court of Appeals' judgment was entered on July 21, 1971, in conformity with a *per curiam* opinion handed down on June 7, 1971 and reported at 443 F. 2d 1173. The judgment and opinion are printed in Appendix A hereto.

The decision and order of the National Labor Relations Board, issued on August 27, 1970, are reported at 185 NLRB No. 25 and are printed in Appendix B hereto.

Jurisdiction.

The judgment of the Court of Appeals denying the petition for review and enforcing the Board's order was entered on July 21, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

Questions Presented.

1. Does Section 8(b)(4)(B) of the National Labor Relations Act, as amended, 29 U.S.C. Section 158 (b)(4)(B), prohibit a union from picketing one oper-

ating division of a corporation in furtherance of its labor dispute with another operating division of the same corporation?

2. Did the National Labor Relations Board and the Court of Appeals err in finding and concluding that the Los Angeles Herald-Examiner, Division of The Hearst Corporation, and the San Francisco Examiner, Division of The Hearst Corporation, were separate employers and "persons" within the meaning of the National Labor Relations Act, as amended, 29 U.S.C. Section 151, *et seq.*, and in finding and concluding that the San Francisco Examiner, Division of The Hearst Corporation, was an unconcerned, neutral third person entitled to the protection of Section 8(b)(4)(B) of the National Labor Relations Act, as amended, 29 U.S.C. Section 158(b)(4)(B), with respect to a labor dispute directly involving the Los Angeles Herald-Examiner, Division of the Hearst Corporation?

3. Did the National Labor Relations Board and the Court of Appeals err in concluding that petitioners had violated Section 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act, as amended, 29 U.S.C. Section 158(b)(4)(i) and (ii)(B), by picketing at the premises of the San Francisco Examiner, Division of The Hearst Corporation, and by inducing employees to refuse to cross said picket lines?

Statute Involved.

Section 2(1) of the National Labor Relations Act, as amended, 29 U.S.C. Section 152(1) provides:

> "The term 'person' includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers."

Section 8(b)(4)(i)(ii)(B) of the National Labor Relations Act, as amended, 29 U.S.C. Section 158(b)(4)(i)(ii)(B) provides:

> "It shall be an unfair labor practice for a labor organization or its agents—to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case, an object thereof is:
>
> (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: Provided, that nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing."

Section 13 of the National Labor Relations Act, as amended, 29 U.S.C. Section 163, provides:

> "Nothing in this Act, except as specifically provided for herein, shall be construed so as either

to interfere with or impede or diminish in any way the right to strike, or to affect the limitation or qualifications on that right."

Statement of the Case.

This case was before the Court of Appeals upon a petition, pursuant to Section 10(f) of the National Labor Relations Act, as amended ("the Act"), 29 U.S.C. Section 160(f), to review an order of the National Labor Relations Board issued on August 27, 1970, and a cross-application for enforcement of the order.

In its decision and order, the Board concluded that the San Francisco Examiner, Division of The Hearst Corporation ("Examiner"), and the Los Angeles Herald-Examiner Division of The Hearst Corporation ("Herald-Examiner"), are separate employers and persons within the meaning of Section 8(b)(4)(B) of the Act, and that the Examiner is an unconcerned neutral third person, a secondary employer, with respect to a primary labor dispute directly involving the Herald-Examiner. The Board held that petitioners had violated Section 8(b)(4)(B) of the Act by picketing the Examiner on January 5, 1968 in connection with a primary labor dispute directly involving the Herald-Examiner. The Court of Appeals enforced the Board's order.

At all times material hereto certain petitioners (hereinafter referred to as "the unions") have been engaged in a primary labor dispute with the Herald-Examiner, an unincorporated operating division of The Hearst Corporation ("Hearst"). On January 5, 1968, the unions, in furtherance of that dispute, picketed the Examiner, another unincorporated operating division of Hearst.

Hearst is a Delaware corporation with its principal office in New York, New York. It maintains seven unincorporated newspaper divisions, including the Los Angeles Herald-Examiner Division and the San Francisco Examiner Division, as well as a number of other divisions and subsidiaries.

The stockholders of Hearst are two foundations and a testamentary trust, the beneficiaries of which are the family and heirs of William Randolph Hearst, Sr.

The Board of Directors of Hearst is composed of twenty-one members, nine of whom are operating heads of Hearst divisions, subsidiaries or properties, eight of whom are members of the Hearst family, and thirteen of whom are the trustees for the two foundations and the testamentary trust, which are the stockholders of the corporation. George R. Hearst, Jr., the publisher and operating head of the Hearld-Examiner, is a vice-president and a member of the Hearst Board of Directors. He is also a member of the Board of Directors of the San Francisco Newspaper Printing Company, a joint venture of Hearst and the Chronicle Publishing Company, which performs all printing, circulation, distributing, and advertising sales work for the two San Francisco newspapers, the Examiner and the Chronicle, and collects all revenues.

Although the operating heads of the Hearst divisions, including the Herald-Examiner and Examiner, have been given a degree of autonomy by the Board of Directors with respect to day-to-day operations, they must seek approval from the finance committee of the Board of Directors or from the Board of Directors itself on capital expenditures of over $10,000. Additionally, if the divisions do not have sufficient funds for major

expenditures, the expenditures are made from general corporate funds. Major decisions with respect to the operation of a division, such as the creation of the San Francisco Newspaper Printing Company, are made by the Board of Directors, and the details of such operational changes are negotiated and determined by general corporate management together with local management.

The divisions maintain comfortable working cash balances for their normal day-to-day operations and send surplus revenue to the corporation, where it becomes part of the general corporate funds; the divisions do not invest their own profits. The corporate offices in New York invest all the profits of the corporation. If the divisions need funds, they receive money from the general funds of the corporation.

Each of the Hearst newspaper divisions does substantial business with other divisions and subsidiaries of The Hearst Corporation, which perform services related to the publication of newspapers, including some Hearst divisions which perform services on a corporate-wide basis for Hearst newspapers only. Because of the volume of business among the Hearst units, The Hearst Corporation has established an inter-company clearing system for these transactions. The inter-company clearing system operates like a bank clearing system. The units involved do not settle with each other; all of a unit's intercompany transactions are entered in its cash forecast at the end of the month, and thereby settled with the corporation. No cash changes hands between the divisions. If a division's working cash balance drops below the necessary level, or if it does not have sufficient cash to cover its inter-company obligations, the inter-company obligations are deferred, and

the corporation "carries" the division with a "down stream advance", without interst charges.

The corporation maintains corporate-wide insurance and pension plans for employees not covered by union plans; editorial employees have corporate-wide seniority rights; and some employees who work at local divisions are employed directly by the corporation under personal service contracts.

William Randolph Hearst, Jr. is designated as "Editor in Chief", and his column, "The Editor's Report", appears regularly in all Hearst newspapers. He also maintains an editorial board in New York which decides which presidential candidates the Hearst newspapers will support in the national presidential elections, after receiving recommendations from the local publishers, and which is instrumental in decisions with respect to Hearst newspaper support of candidates for other offices. The editorial board also generates editorials and features for the use of all Hearst newspapers.

REASONS FOR GRANTING THE WRIT.

1. The Court of Appeals Has Decided an Important Question of Federal Law Which Has Not Been, but Should Be, Settled by This Court.

In a recent case arising under Section 8(b)(4)(B) of the Act, *NLRB v. Local 825, Intl. Union of Operating Engineers,* 400 U.S. 297 (1971), this Court, in focusing on the dual Congressional purpose of protecting third parties from disputes in which they have no concern while also protecting labor's right to exert legitimate pressure aimed at the primary employer, observed that:

> ". . . [T]here are two threads to Section 8(b)-(4)(B) that require disputed conduct to be classified as either 'primary' or 'secondary'. And the tapestry that has been woven in classifying such conduct is among the labor law's most intricate."

In attempting to weave this intricate tapestry and strike a balance between "primary" and "secondary" activity, the Board and the Courts have encountered a recurrent problem in cases where separate legal entities are interrelated through common ownership, common control, integrated operations, etc.[1]

---

[1]See *J. G. Roy & Sons,* 118 NLRB 286, set aside 251 F. 2d 771 (1st Cir. 1958); *Bachman Machine Co.,* 121 NLRB 299, set aside 266 F. 2d 599 (8th Cir. 1959); *General Drivers, etc. Local Union No. 806, IBT (Ada Transit Mix),* 130 NLRB 788; *Amalgamated Lithographers of America, etc.,* 130 NLRB 968, set aside 301 F. 2d 20 (5th Cir. 1962); *Amalgamated Lithographers of America (Ind.),* 130 NLRB 985; *Local 282, Intl. Bhd. of Teamsters (Acme Concrete & Supply Corp.),* 137 NLRB 1321; *Miami Newspaper Printing Pressmen's Local 46,* 138 NLRB 1346, enf'd 322 F. 2d 405 (D.C. Cir. 1963); *Drivers, Chauffeurs & Helpers Local No. 639, IBT (Poole's Warehousing, Inc.),* 158 NLRB 1281; *Carpet Linolcum, Soft Tile & Resilient Floor Covering Layers, Local Union No. 419 v. NLRB,* 429 F. 2d 747 (D.C. Cir. 1970), modifying and remanding 176 NLRB No. 120.

The instant case does not, of course, involve separate legal entities which are in some way interrelated. Rather, it involves two operating arms of a single legal entity, The Hearst Corporation. The issues involved in this case, *i.e.*, whether divisions of a single corporation can, as a matter of law, be deemed to be separate, wholly unconcerned neutral third persons with respect to one another's labor disputes, and whether these divisions of The Hearst Corporation should be treated as separate persons under Section 8(b)(4(B), are matters of first impression in the courts, although the identical issue, involving two other divisions of Hearst is presently pending in the Court of Appeals for the D.C. Circuit.[2]

This Court has frequently interpreted Section 8(b)-(4)(B) as applying only to secondary activity directed at wholly unconcerned, neutral third persons and has admonished the Board and the courts not to apply the strictures of Section 8(b)(4)(B) in such a way as to interfere with the protected rights of unions to engage in primary activity. *NLRB v. Intl. Rice Mill Co.*, 341 U.S. 665 (1951); *NLRB v. Denver Bldg. & Const. Trades Council*, 341 U.S. 675 (1951); *National Woodwork Manufacturers Assn. v. NLRB*, 386 U.S. 612 (1967).

We respectfully submit, and will argue *infra*, that the Court of Appeals decision in the instant case is in

---

[2]In a companion case to the instant case, *Baltimore News American Division, The Hearst Corporation*, 185 NLRB No. 26, the Board held that two Hearst divisions in Baltimore, Md. are separate persons within the meaning of §8(b)(4)(B) and held that the union in that case had violated the Act by picketing one of the divisions in connection with its dispute with the other. A petition to review the Board's order has been docketed in the D.C. Circuit as No. 24,641; briefs have been filed and oral argument is scheduled for October 26, 1971.

direct conflict with the general principles enunciated by this Court in *NLRB v. Intl. Rice Mill Co., supra, NLRB v. Denver Bldg. & Const. Trades Council, supra,* and *National Woodwork Manufacturers Assn. v. NLRB, supra,* and with the statute itself and the clear intent of Congress in adopting it.

In addition, however, we respectfully submit that a writ of certiorari should be granted in this case so that this Court can establish appropriate standards and guidelines to be followed by the Board and the courts in determining whether two related entities or two parts of a single entity are to be treated as a single person or as separate persons for purposes of Section 8(B)(4)(B) of the Act. This problem is a recurring one in the administration of the Act and is obviously a critically important issue in the determination of whether conduct is primary or secondary.

The questions raised in this case relating to the "neutrality" of divisions of the same corporation and the "neutrality" of commonly owned corporations for secondary boycott purposes have a profound effect on all large or diversified corporations, on all conglomerates, and on all corporations which operate through more than one division or plant. The determination as to who is truly neutral is central to the secondary boycott provisions of the Act, and with the multiplicity of large corporations and conglomerates, it is important for this Court to establish appropriate standards and guidelines for making this determination with respect to corporations which operate through divisions or multiple geographical locations as well as conglomerates and related corporations.

Although this Court has frequently admonished the Board and the courts to limit their involvement to the

prohibited secondary activity and not to infringe upon primary activity, it has not heretofore given the Board and the courts any guidelines to be used in determining when an allegedly unconcerned neutral is or is not the disinterested third person whom Section 8(b)(4)(B) protects. That such standards and guidelines are necessary is evident from the decision in the instant case, which extends and distorts Section 8(b)(4)(B) well beyond the scope intended by Congress and well beyond the general limitations which have been expressed by this Court. Accordingly, we respectfully urge this Court to grant the writ and establish appropriate standards and guidelines in this complex and crucial area of labor law.

2. The Court of Appeals Decision Is in Conflict With the Statute, the Intent of Congress, and Applicable Decisions of This Court.

As we have argued above, this Court has frequently considered the Congressional purpose in enacting Section 8(b)(4)(B) and has consistently held that regardless of the sweeping language of the statute, its application is to be limited to secondary activities directed against true neutrals—the type of activity Congress intended to prohibit; this Court has frequently cautioned against any reading of the statute which expands its sweep so as to prohibit or interfere with primary picketing.

Thus, in *NLRB v. Intl. Rice Mill Co.*, 341 U.S. 665 (1951), the Court refused to find a violation where a primary picket line had the effect of inducing employees of a neutral employer to refuse to perform services. The Court said:

> "By §13, Congress has made it clear that §8(b)(4) and all other parts of the Act which otherwise

> might be read so as to interfere with, impede or diminish the union's traditional right to strike, may be so read only if such interference, impediment or diminution is 'specifically provided for' in the Act. No such specific provision in §8(b)(4) reaches the incident here. The material legislative history supports this view." 341 U.S. at 673.

And, in *NLRB v. Denver Bldg. & Const. Trades Council,* 341 U.S. 675 (1951), decided on the same day as *Intl. Rice Mill Co.,* the Court upheld the Board's finding of a violation but made it clear that the Board's views must be in "conformity with the dual Congressional objectives of preserving the right of labor organizations to bring pressure to bear on offending employers in primary labor disputes and of shielding unoffending employers and others from pressures in controversies not their own." 341 U.S. at 692.

See also *National Woodwork Manufacturers Assn. v. NLRB,* 386 U.S. 612 (1967).

A review of the legislative history of Section 8(b)(4)(B) of the Act makes it clear that Congress did not intend to prohibit the type of conduct involved in the instant case.

Thus, the sponsor of the legislation, Senator Taft, in explaining the purpose of the secondary boycott provisions, said:

> "This provision makes it unlawful to resort to a secondary boycott to injure the business of *a third person who is wholly unconcerned* in a disagreement between an employer and his employees." (Emphasis supplied.) 93 Cong. Record 4323, II Legislative History of the LMRA, 1947, 1106.

Senator Taft later noted:

> "The secondary boycott ban is merely intended to prevent a union from *injuring a third person who is not involved in any way* in the dispute or strike, and therefore should not suffer economic damage simply because of the action of the labor organization. It is not intended to apply to a case where the third person is, in effect, in cahoots with or acting as a part of the primary employer." (Emphasis supplied.) 95 Cong. Record 8709.

And, as pointed out by the Chief Judge of the Second Circuit, Learned Hand:

> "The gravamen of a secondary boycott is that its sanctions bear, not on the employer who alone is a party to the dispute, but upon some third party who has no concern in it." *Intl. Bhd. of Electrical Workers v. NLRB,* 181 F. 2d, 34, 37 (2d Cir. 1950), aff'd 341 U.S. 694.

We respectfully submit that, as a matter of law, these two divisions of a single corporation cannot be treated as separate neutral persons, wholly unconcerned in one another's labor disputes, and the conduct of petitioners cannot be viewed as secondary activity proscribed by Section 8(b)(4)(B) of the Act. A single legal entity cannot be a neutral, innocent bystander with respect to a labor dispute involving itself. As a matter of law, one Hearst division cannot be a "neutral" entitled to the protection of Section 8(b)(4)(B) in disputes directly involving another Hearst division. Congress did not intend to and did not in fact prohibit the picketing of one operating division of a corporation in furtherance of a dispute directly affecting another operating division.

In addition, we submit that the facts of this case relating to common, indeed identical, ownership, common control, integration of operations, pooled resources and investments, centralized financial structure, common purchasing, common news coverage, editorials and columns, Hearst family influence and domination throughout the corporation, and other interrelationships within the corporation, preclude a finding under any reasonable or rational factual standard, that the Examiner is a wholly unconcerned neutral with respect to disputes involving the Herald-Examiner.

The type of activity involved in the instant case is not a "secondary boycott" as that term was used by Congress, and is not the type of conduct Congress intended to prohibit. Senator Taft and other proponents of the bill frequently stated that it was designed to eliminate the "secondary boycott" and the examples of union conduct cited in the debates involved union efforts to draw in other neutral employers through pressure calculated to induce them to cease doing business with the primary employer.[8] And the Senate Committee characterized the type of conduct banned by Section 8(b)(4)(B) in the same terms:

> "Thus, it would not be lawful for a union to engage in a strike against employer A for the pur-

---

[8]See, e.g., S. Rep. No. 105, 80th Cong., 1st Sess., 7, 8, 22, 54, in I Leg. Hist. of the LMRA of 1947, 413, 414, 428, 460; H.R. Conf. Rep. No. 510, 80th Congr., 1st Sess., 43, in I Leg. Hist. of the LMRA of 1947, S47; 93 Cong. Rec. 3534, 3542, 3559, A2012, in I Leg. Hist. of the LMRA of 1947, 613-614, 630, 658, 869; 93 Cong. Rec. 1910, 3954, 4255, 4261, 5040, 5045-5046, 5147, 6603, in II Leg. Hist. of the LMRA of 1947, 982, 1012, 1055-1056, 1068, 1354, 1365, 1947, 1544.

> pose of forcing that employer to cease doing business with employer B; nor would it be lawful for a union to boycott employer A because employer A uses or otherwise deals in the goods of or does business with employer B (with whom the union has a dispute)." S. Rep. No. 105, 80th Cong., 1st Sess., 22, I Leg. Hist. of the LMRA of 1947, 428.

In the instant case, the unions quite obviously were not picketing for the purpose of forcing the Examiner to cease doing business with the Herald-Examiner nor because the Examiner was doing business with the Herald-Examiner; the picketing here occurred because the Examiner is one arm of the Hearst empire, and the unions are forced to fight the economic strength of that entire empire in this labor dispute. The proscribed object under Section 8(b)(4)(B), to force employer A (the secondary employer) to cease doing business with employer B (the primary), is inapposite to the instant case.

The Board and the Court of Appeals in the instant case, however, have expanded and rewritten the secondary boycott prohibitions of the Act. In total disregard of the purposes underlying Section 8(b)(4)(B), the intent of Congress, the language of the statute, and the legislative history, the Board and the Court of Appeals have prohibited the unions herein from applying economic pressure not only against "secondary" business enterprises doing business with Hearst, but also against all parts of The Hearst Corporation itself, except the part located in Los Angeles, California. The

Board and the Court of Appeals have done here exactly what this Court has consistently warned may not be done—they have prohibited activity which Congress did not prohibit and infringed upon and limited the unions' right to engage in primary picketing activity.

This extension of the "secondary boycott" prohibitions of the Act into the area of primary activity is a fundamental departure from long and well-established rights of labor. The actions of the Board and the Court of Appeals in this case have further complicated an already highly complex area of labor law, have cast serious doubt upon the basic right of labor to engage in peaceful, primary picketing, and have raised substantial questions with respect to the dual purpose underlying Section 8(b)(4)(B), i.e., of protecting neutrals while preserving the right of labor to engage in primary activity. This case raises critical questions relating to the basic policies and purposes underlying Section 8(b)(4)(B) and the Act, as a whole —questions of major importance to all of organized labor and to all corporations which operate through divisions or multiple locations as well as separate, but related, corporations and conglomerates. These questions are fundamental to the application of the "secondary boycott" provisions of the Act, and we respectfully submit that they should be decided by this Court.

Conclusion.

For the foregoing reasons, it is urged that this petition for writ of certiorari should be granted.

Respectfully submitted,

STEPHEN REINHARDT,
Attorney for Petitioners.

Of Counsel:

BODLE, FOGEL, JULBER AND REINHARDT,
GEORGE E. BODLE,
DANIEL FOGEL,
LESTER G. OSTROV,

ANSELL & ANSELL,
BRUNDAGE, NEYHART, GRODIN & BEESON,
BRUNDAGE, NEYHART, MILLER, ROSS & REICH,
GEFFNER & SALZMAN,
ROSENTHAL & LEFF.

APPENDIX "A."

Judgment.

United States Court of Appeals, for the Ninth Circuit.

Los Angeles Newspaper Guild, Local 69, et al., Petitioners, v. National Labor Relations Board, Respondent. and Los Angeles Herald Examiner, Division of The Hearst Corporation; and San Francisco Examiner, Division of The Hearst Corporation, Intervenors. No. 26,-534.

Before: CHAMBERS, ELY and WRIGHT, Circuit Judges.

THIS CAUSE came on to be heard upon a petition of Los Angeles Newspaper Guild, Local 69, et al., to review the order issued against Petitioners, their officers, agents, and representatives on August 27, 1970, and upon cross-application of the National Labor Relations Board to enforce said order. The Court heard argument to respective counsel on June 3, 1971, and has considered the briefs and transcript of record filed in this cause. On June 7, 1971, the Court being fully advised in the premises, handed down its decision denying the petition for review and granting enforcement of the Board's Order. In conformity therewith, it is hereby

ORDERED AND ADJUDGED by the United States Court of Appeals for the Ninth Circuit that:

A. The Respondents Los Angeles Newspaper Guild, Local 69; Los Angeles Web Pressmen's Union No. 18; Los Angeles Stereotypers' Union No. 58; Los Angeles Typographical Union No. 174; International Association of Machinists and Aerospace Workers, District

Lodge No. 94, Building Service and Maintenance Employees' Union No. 399; Los Angeles Mailers' Union No. 9; and Los Angeles Paper Handlers' Union No. 3 (hereinafter called Respondent Unions), their officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Inducing or encouraging individuals employed by The San Francisco Examiner Division of The Hearst Corporation, The Chronicle Publishing Company and The San Francisco Printing Company, Inc., or any other person engaged in commerce or in an industry affecting commerce with whom they have no primary labor dispute, to engage in a strike or refusal in the course of their employment to perform services, where an object thereof is to force or require the above-named persons to cease doing business with each other or with their customers and suppliers, under circumstances prohibited by Section 8(b)(4)(i)(B) of the National Labor Relations Act (hereinafter called the Act).

(b) Threatening, restraining, or coercing the above-named persons or any other person engaged in commerce or in an industry affecting commerce with whom they have no primary labor dispute, where an object thereof is to force or require the above-named persons to cease doing business with each other or with their customers and suppliers, under circumstances prohibited by Section 8(b)(4)(ii)(B) of the Act, as amended.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Post at their business offices and meeting halls in Los Angeles, California, copies of the attached notice marked "Appendix A." Copies of said notice, on forms

provided by the Regional Director for Region 21, (Los Angeles, California) shall, after being duly signed by the above Respondent Unions, be posted by them immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Unions to insure that said notices are not altered, defaced, or covered by any other material.

(b) Sign and mail to the aforesaid Regional Director sufficient copies of said notice, on forms provided by him, for posting by the San Francisco Examiner, the Chronicle, and the Printing Company, if willing.

(c) Notify the said Regional Director, in writing, within 10 days from the date of this Judgment, what steps have been taken to comply herewith.

B. Respondents Newspaper and Periodical Drivers' and Helpers' Union, Local 921, and San Francisco-Oakland Newspaper Guild, Local 52 of the American Newspaper Guild, their officers, agents, and representatives shall:

1. Cease and desist from:

(a) Inducing or encouraging individuals employed by The San Francisco Printing Company, Inc., or any other person engaged in commerce or in an industry affecting commerce with whom they have no primary labor dispute to engage in a strike or refusal in the course of their employment to perform services, where an object thereof is to force or require said person to cease doing business with The San Francisco Examiner or Chronicle under circumstances prohibited by Section 8(b)(4)(i)(B) of the Act, as amended.

(b) Threatening, restraining, or coercing The San Francisco Printing Company, Inc., or any other persons engaged in commerce or in an industry affecting commerce with whom they have no primary labor dispute, where an object thereof is to force or require said persons to cease doing business, with the San Francisco Examiner or Chronicle under circumstances prohibited by Section 8(b)(4)(ii)(B) of the Act, as amended.

2. Take the following affirmative action designed to effectuate the policies of the Act, as amended:

(a) Post at their business offices and meeting halls in San Francisco, California, copies of the attached notice marked "Appendix B." Copies of said notice, on forms provided by the said Regional Director shall, after being duly signed by the above Respondent Unions be posted by them immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Unions to insure that said notices are not altered, defaced, or covered by any other material.

(b) Sign and mail to the said Regional Director sufficient copies of said notice, on forms provided by him, for posting by The San Francisco Printing Company, Inc., if willing.

(c) Notify the said Regional Director, in writing, within 10 days from the date of this Judgment, what steps have been taken to comply herewith.

With costs in this Court in
favor of the Board and against
the petitioners.

Costs:

One-half claimed cost of brief of the Board.....$120.68

Endorsed, Judgment Filed and Entered July 21, 1971.

/s/ William B. Luck
William B. Luck
Clerk

A True Copy

Attest: August 16, 1971.

William B. Luck
Clerk

/s/ R. D. Hewitt
Deputy

So Ordered /s/ Richard H. Chambers, /s/ Walter Ely, /s/ Eugene A. Wright, Circuit Judges.

Filed: July 21, 1971. Wm. B. Luck, Clerk.

APPENDIX A

NOTICE

TO ALL EMPLOYEES OF THE SAN FRANCISCO EXAMINER DIVISION OF THE HEARST CORPORATION, THE CHRONICLE PUBLISHING COMPANY AND THE SAN FRANCISCO PRINTING COMPANY, INC.

TO ALL MEMBERS OF LOS ANGELES NEWSPAPER GUILD, LOCAL 69; LOS ANGELES WEB PRESSMEN'S UNION NO. 18; LOS ANGELES STEREOTYPERS' UNION NO. 58; LOS ANGELES TYPOGRAPHICAL UNION NO. 174; INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, DISTRICT LODGE NO. 94; BUILDING SERVICE AND MAINTENANCE EMPLOYEES UNION NO. 399; LOS ANGELES MAILERS' UNION NO. 9; AND LOS ANGELES PAPER HANDLERS' UNION NO. 3.

Posted pursuant to a Judgment of the United States Court of Appeals enforcing an Order of the National Labor Relations Board, an agency of the United States Government.

WE WILL NOT engage in, or induce or encourage any individual employed by THE SAN FRANCISCO EXAMINER DIVISION OF THE HEARST CORPORATION, THE CHRONICLE PUBLISHING COMPANY, THE SAN FRANCISCO PRINTING COMPANY, INC., or any other person engaged in commerce or in an indus-

try affecting commerce, to engage in a strike or refusal of the course of such individual's employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities, or to perform any services, where an object thereof is to force or require THE SAN FRANCISCO EXAMINER DIVISION OF THE HEARST CORPORATION, THE CHRONICLE PUBLISHING COMPANY, THE SAN FRANCISCO PRINTING COMPANY, INC. to cease doing business with one another or with their customers or suppliers; or to force or require any other person to cease doing business with THE SAN FRANCISCO DIVISION OF THE HEARST CORPORATION, THE CHRONICLE PUBLISHING COMPANY OR THE SAN FRANCISCO PRINTING COMPANY, INC.

WE WILL NOT coerce or restrain THE SAN FRANCISCO EXAMINER DIVISION OF THE HEARST CORPORATION, THE CHRONICLE PUBLISHING COMPANY, THE SAN FRANCISCO PRINTING COMPANY, INC. or any other person for such an object.

LOS ANGELES NEWSPAPER GUILD, LOCAL 69
(Labor Organization)

Dated..... By.....
(Representative) (Title)

LOS ANGELES WEB PRESSMEN'S UNION NO. 18
(Labor Organization)

Dated..... By.....
(Representative) (Title)

LOS ANGELES STEREOTYPERS' UNION NO. 58
(Labor Organization)

Dated..... By.....
(Representative) (Title)

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, DISTRICT LODGE NO. 94
(Labor Organization)

Dated..... By.....
(Representative) (Title)

BUILDING SERVICE AND MAINTENANCE EMPLOYEES UNION NO. 399
(Labor Organization)

Dated..... By.....
(Representative) (Title)

LOS ANGELES MAILERS' UNION NO. 9
(Labor Organization)

Dated..... By.....
(Representative) (Title)

LOS ANGELES PAPER HANDLERS' UNION NO. 3
(Labor Organization)

Dated..... By.....
(Representative) (Title)

LOS ANGELES TYPOGRAPHICAL UNION NO 174
(Labor Organization)

Dated..... By.....
(Representative) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If members have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 849 South Broadway, Los Angeles, Calif., Telephone 213-688-5200.

APPENDIX B

NOTICE

TO ALL EMPLOYEES OF THE SAN FRANCISCO PRINTING COMPANY, INC.

TO ALL MEMBERS OF NEWSPAPER AND PERIODICAL DRIVERS' AND HELPERS' UNION LOCAL 921 and SAN FRANCISCO-OAKLAND NEWSPAPER GUILD, LOCAL 52, OF THE AMERICAN NEWSPAPER GUILD

Posted pursuant to a Judgment of the United States Court of Appeals enforcing an Order of the National Labor Relations Board, an agency of the United States Government.

WE WILL NOT engage in, or induce or encourage any individual employed by THE SAN FRANCISCO PRINTING COMPANY, INC. or any other person engaged in commerce or an industry affecting commerce, to engage in a strike or refusal in the course of such individual's employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities, or to perform any services, where an object thereof is to force or require THE SAN FRANCISCO PRINTING COMPANY, INC. or any other person to cease doing business with THE SAN FRANCISCO EXAMINER DIVISION OF THE HEARST CORPORATION or THE CHRONICLE PUBLISHING COMPANY; or to force or require any other person to cease doing business with THE SAN FRANCISCO PRINTING COMPANY, INC.

WE WILL NOT coerce THE SAN FRANCISCO PRINTING COMPANY for such an object.

NEWSPAPER AND PERIODICAL DRIVERS' AND HELPERS' UNION LOCAL 921
(Labor Organization)

Dated.....by.....
(Representative) (Title)

SAN FRANCISCO-OAKLAND NEWSPAPER GUILD, LOCAL 52 OF THE AMERICAN NEWSPAPER GUILD
(Labor Organization)

Dated.....By.....
(Representative) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If members have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 849 South Broadway, Los Angeles, Calif., Telephone 213-688-5200.

United States Court of Appeals, for the Ninth Circuit.

Los Angeles Newspaper Guild, Local 69, et al., Petitioners, vs. National Labor Relations Board, Respondent. and Los Angeles Herald Examiner, Division of the Hearst Corporation; and San Francisco Examiner, Division of the Hearst Corporation, Intervenors. No. 26,534.

[June 7, 1971].

On Petition for Review and Cross Application for Enforcement of an Order of the National Labor Relations Board.

Before: CHAMBERS, ELY and WRIGHT, Circuit Judges

PER CURIAM:

The petition for review is denied.

The Board's cross application for enforcement is granted. See the Board's opinion, reported at 185 NLRB No. 25.

APPENDIX "B."

185 NLRB No. 25

D-4289
San Francisco, Calif.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD
LOS ANGELES NEWSPAPER GUILD, LOCAL 69;
LOS ANGELES WEB PRESSMEN'S UNION NO. 18;
LOS ANGELES STEREOTYPERS' UNION NO. 58;
LOS ANGELES TYPOGRAPHICAL UNION NO. 174;
INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, DISTRICT LODGE NO. 94;
GENERAL WAREHOUSEMEN'S UNION LOCAL 598;
BUILDING SERVICE AND MAINTENANCE EMPLOYEES
UNION NO. 399; LOS ANGELES MAILERS' UNION NO. 9;
LOS ANGELES PAPER HANDLERS' UNION NO. 3;
AND NEWSPAPER AND PERIODICAL DRIVERS' AND
HELPERS' UNION LOCAL 921

and

Case 21-CC-1043

SAN FRANCISCO EXAMINER, DIVISION OF THE
HEARST CORPORATION: AND LOS ANGELES HERALD-
EXAMINER, DIVISION OF THE HEARST CORPORATION
SAN FRANCISCO-OAKLAND NEWSPAPER GUILD, LOCAL
52 OF THE AMERICAN NEWSPAPER GUILD

and

Case 21-CC-1043-2

LOS ANGELES HERALD-EXAMINER DIVISION
OF THE HEARST CORPORATION; AND SAN FRANCISCO
EXAMINER DIVISION OF THE HEARST CORPORATION

Decision and Order.

On March 28, 1969, Trial Examiner Herman Marx issued his Decision in the above-entitled proceeding, finding that certain of the above Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action. He also found that these Respondents did not engage in other unfair labor practices alleged in the complaint, and that Warehousemen's Union engaged in no unfair labor practice. Thereafter the General Counsel, Charging

Parties, and certain of the Respondent filed exceptions to the Trial Examiner's Decision, together with supporting briefs. The Charging Parties filed a supplemental brief in support of their exceptions and a brief in answer to the Respondents' exceptions, and the Respondents filed a brief in opposition to the General Counsel's and Charging Parties' exceptions.

The National Labor Relations Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in this case,[1] and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions and modifications.[2]

At all times material herein, the Respondent Los Angeles Unions[3] represented employees of The Los Angeles Herald-Examiner Division of The Hearst Corporation in separate units at Los Angeles, California, and

---

[1]The Respondents in the instant case and the respondent in *Baltimore News American Division, The Hearst Corporation,* 185 NLRB No. 26 issued this day, have filed a joint motion to consolidate these two cases for purposes of Decision. The Charging Parties and the General Counsel in both cases have filed oppositions thereto. We hereby deny the Respondents joint motion, as the parties are different in each case, there are some different issues in the instant case, and no useful purpose would be served by consolidation at this stage of the proceedings.

[2]The building at 5th and Mission Streets, San Francisco, where, among other places, picketing occurred, is owned by The San Francisco Examiner Division of The Heart Corporation and the San Francisco Chronicle Publishing Company, and not solely by The Chronicle Publishing Company as the Trial Examiner stated.

[3]Los Angeles Newspaper Guild, Local 69; Los Angeles Web Pressmen's Union No. 18; Los Angeles Stereotypers' Union No. 58; Los Angeles Typographical Union No. 174; International Association of Machinists and Aerospace Workers, District Lodge No. 94; General Warehousemen's Union Local 598; Building Service and Maintenance Employees Union No. 399; Los Angeles Mailers' Union No. 9; and Los Angeles Paper Handlers' Union No. 3.

were engaged in an economic strike in Los Angeles against the Los Angeles Herald-Examiner. In furtherance of this strike, all the Los Angeles Respondents, except the Warehousemen's Union, formed and became members of the Los Angeles Strike Council and picketed various premises of The San Francisco Examiner Division of The Hearst Corporation, The San Francisco Chronicle Publishing Company, and The San Francisco Printing Company, Inc. The Respondent San Francisco Unions are Newspaper and Periodical Drivers' and Helpers' Union Local 921, which represented employees of the Printing Company, and San Francisco-Oakland Newspaper Guild, Local 52, of the American Newspaper Guild, which represented employees of the Printing Company, The San Francisco Examiner, and The San Francisco Chronicle in a multiemployer unit. During the picketing by the Los Angeles Unions, the San Francisco Unions asked employees who were their members at the Printing Company to honor the picket line. That request was honored, causing a stoppage of work by the Printing Company and the suspension of publication of the San Francisco newspapers.

The Trial Examiner found, and we agree, that eight of the Respondent Los Angeles Unions[4] picketed, or caused to be picketed, The San Francisco Examiner Division of The Hearst Corporation, The San Francisco Chronicle Publishing Company, and The San Francisco

[4]We agree with the Trial Examiner, for the reasons stated in his Decision, that the Warehousemen's Union was not responsible for the picketing. Accordingly, we adopt his recommendation that the complaint be dismissed as to it.

Printing Company, Inc. in furtherance of their dispute with The Los Angeles Herald-Examiner Division of The Hearst Corporation, and thereby induced and encouraged employees of, and coerced, the three picketed companies, for the purpose of causing a cessation of business between such companies and their customers and suppliers, and each other, in order to bring pressure to bear on The Los Angeles Herald-Examiner to accede to the Union's demands.

1. We disagree, however, with the Trial Examiner's conclusion that eight of the Los Angeles Respondents did not violate Section 8(b)(4)(B) of the National Labor Relations Act, as amended, by picketing The San Francisco Division of The Hearst Corporation. The Trial Examiner based that conclusion on the ground that the San Francisco Division and the Los Angeles Herald-Examiner Division are not separate persons. We believe that this record, and our decisions in similar cases, require the contrary conclusions.

Section 8(b)(4) forbids unions to (i) induce individuals employed by any person to strike, or (ii) coerce any person, with an object of (B) forcing any person to cease doing business with any other person. Thus, if each division is a person, the picketing was proscribed by Section 8(b)(4)(B) as secondary. Section 2(1) provides that "the term 'person' includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers."

The Board has held with court approval that separate corporate subsidiaries are separate persons, each entitled to the protection of Section 8(b)(4)(B) from the labor disputes of the other, if neither the subsidiaries nor the parent exercises actual or active, as opposed to merely potential, control over the day-to-day operations or labor relations of the other.[5] It is clear that no such active or actual control is exercised here.

The Hearst Corporation is a Delaware corporation engaged in a conglomerate of business activities conducted through some 20 divisions, of which 7 are newspapers, and through 31 separately incorporated subsidiaries.[6] As to the two divisions here involved the president of the Corporation appoints their heads and delegates to them the responsibility for the day-to-day operation of the divisions, including the formulation and implementation of labor relations policies. He may remove them for "an unsatisfactory job," meaning unfavorable earnings.

Each division manager determines the size and salaries of his staff whom he hires, discharges, and promotes. There is no transfer of employees among

---

[5]*Knight Newspapers,* 138 NLRB 1346, enfd. 322 F.2d 405 (C.A.D.C.); *Poole's Warehousing,* 158 NLRB 1281. Compare *J. G. Roy and Sons Company v. N.L.R.B.,* 251 F.2d 771 (C.A. 1); *N.L.R.B. v. Bachman Machine Co.,* 266 F.2d 599 (C.A. 8).

[6]The Hearst divisions are engaged in such diverse businesses as the publication of newspapers and magazines; the manufacturer of specialty paper; the operation of ranches and timberlands, a newspaper syndicate, a newsprint brokerage, and a purchasing service; a real estate investment enterprise; and the collection and display of art objects and antiques. The corporate subsidiaries are engaged in such activities as advertising representative, movie making, the acquisition and sale of musical compositions, the distribution of publishing equipment and supplies, and the processing of photographs.

divisions. Although the Corporation makes available to the divisions certain insurance, pension, and salary-continuation programs, each division may accept such programs or not as it sees fit.

Each division manager has final authority to formulate and effectuate news, editorial, production, advertising, and circulation policies. He decides whether or not to use Corporation-owned services and features. Thus, the Herald-Examiner purchases its newsprint from the Hearst Enterprises Division, but the San Francisco Examiner does not.

Each division maintains its own financial system, subject to uniform reporting requirements for tax purposes. The divisions retain "a comfortable cash balance" as "operating profits" and remit the surplus to the Corporation. Although corporate approval is required for expenditures of more than $10,000, such approval has never been withheld.

These facts establish that the authority exercised by the Corporation over the divisions is limited to certain financial matters inherent in common ownership, and amounts only to potential control over their operations. The Corporation does not exercise actual, or active, control over these divisions which operate independently of the Corporation and each other as separate autonomous newspaper enterprises.

It is apparent, therefore, that if these two divisions were corporate subsidiaries instead of divisions, they would be entitled to protection of Section 8(b)(4)(B) from each other's labor disputes. To deprive them of the protection of the statute on the technical ground that they are merely divisions of the Corporation would exalt from over substance, a result which we are

convinced is not required by the statute. Cf. *Alexander Warehouse*, 128 NLRB 916, where the Board found that three geographically proximate warehouses of the same corporation could not be regarded as separate employers under a comparable statutory provision because the day-to-day operations of each warehouse, including their labor relations policies, were subject to the corporation's actual control, and were operated in the same manner as allies. By contrast, the divisions here involved are not subject to actual control by The Hearst Corporation, serve different newspaper advertisers and readers in widely separated geographic areas, and thus, under the principle of that case, are neutral employers.

Section 2(1) on its face does not state that only the entities specifically enumerated therein are to be considered "persons" to the exclusion of all others. It states, instead, that "person" *includes* those entities enumerated. Therefore, where, as here, a virtually autonomous division of a corporation has all the relevant attributes of a person excepting only separate incorporation, logic dictates that it too be considered a person.[7]

---

[7]See *Local Union #25, International Brotherhood of Teamsters et al. v. New York, New Haven, and Hartford Railroad Co.*, 350 U.S. 155, cited in the legislative history to the 1959 amendments, in which the Supreme Court held the railroad was protected against secondary pressures by virtue of the definition of "employer." The Court stated that since "railroads are not excluded from the Act's definition of 'person,' they are entitled to Board protection from the kind of unfair labor practice proscribed by Section 8(b)(4)(A). See also, *Local No. 24, International Brotherhood of Teamsters, et al. (A.C.E. Transportation) v. N.L.R.B.*, 266 F.2d 675, 680 (C.A.D.C.) where the Court stated that whether a violation of 8(b)(4)(A) and (B) has occurred "cannot be reached by the use of any legalistic word or phrase. . . ."

Moreover, we believe this interpretation conforms with the intent of Congress when in 1959 it amended the Act by substituting the word "person" for "employer" in Section 8(b)(4). Although we do not find the legislative history particularly helpful in resolving the issue before us, it is generally recognized that this amendment was intended to reduce the impact of labor disputes by expanding the protection afforded by this Section.

As the Supreme Court stated in *Local 1976 Carpenters, (Sand, Door and Plywood Co.) v. N.L.R.B.*, 357 U.S. 94, 100, Congress' purpose in enacting the Taft-Hartley Act amendments was "to restrict the area of industrial conflict insofar as this could be achieved by prohibiting the most obvious widespread and, as Congress evidently judged, dangerous practice of unions to widen that conflict: the coercion of neutral employers, themselves not concerned with a primary labor dispute, through the inducement of the employees to engage in strikes or concerted refusals to handle goods."

As observed, under the principles established in *Alexander Warehouse* and *Knight Newspapers*, each of these divisions would be treated as a separate employer, both before and after the 1959 amendment. Not to treat them as separate persons would result in widening, instead of narrowing, labor disputes and contracting instead of expanding the coverage of Section 8(b)(4)(B) contrary to the intent of Congress and the mandate of the Supreme Court.

Moreover, the General Counsel has issued and the Board and courts have found merit in complaints

against divisions of corporations under Section 10,[8] which provides under (a) that "the Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice . . ." and under (b) that "whenever it is charged that any person has engaged in, or is engaging in any such unfair labor practice, the Board . . . shall have the power to issue a complaint. . . ." Indeed Congress must have recognized that such practice was extant when it enacted the 1959 amendments.

Accordingly, as the Los Angeles Unions' picketing of the San Francisco Examiner had the effect of coercing it and inducing its employees to strike, both with an object of causing a cessation of business between the Examiner and its customers and suppliers, we find that such picketing violated Section 8(b)(4)(i)(ii)(B) of the Act.[9]

---

[8]See e.g. *N.L.R.B. v. The Bendix Corporation (Research Laboratories Division)*, 299 F.2d 308 (C.A. 6) cert. denied 371 U.S. 827; *N.L.R.B. v. Dan River Mills Incorporated, Alabama Division*, 274 F.2d 381 (C.A. 5), *N.L.R.B. v. General Electric Company, Specialty Control Department*, 383 F.2d 152 (C.A. 4) *International Union of Electrical Radio and Machine Workers, AFL-CIO, Frigidaire Local 801 v. N.L.R.B. (General Motors Corporation, Frigidaire Division)*, 307 F.2d 679 (C.A.D.C.), cert. denied, 371 U.S. 936; *N.L.R.B. v. Insulating Fabricators, Inc., Southern Division*, 338 F.2d 1002 (C.A. 4); *International Union, United Automobile Workers of America, U.A.W. v. N.L.R.B. and Wooster Div. of Borg-Warner Corp.*, 236 F.2d 898 (C.A. 6); *Intertype Company, a Division of Harris-Intertype Corporation v. N.L.R.B.* 371 F.2d 787 (C.A. 4); *Los Angeles Mailers Union #9, I.T.U.*, 135 NLRB 1130. *Hilboro Newspapers Publishing Printing Company, Division of The Hearst Publishing Company, Inc.*, 127 NLRB 591. Divisions are considered to be employers in representation case proceedings *General Motors Corp. (Detroit Diesel Eng. Div.)*, 51 NLRB 457.

[9]Accord, *Penello v. American Federation of Television and Radio Artists*, 291 F. Supp. 409 (U.S.D.C. Md.); and *Kennedy v. San Francisco-Oakland Newspaper Guild* (U.S.D.C., N.D. Calif.), February 7, 1968, affd. 412 F.2d 541 (C.A. 9).

2. As we have found the San Francisco Examiner to be a neutral person, we also find, in agreement with the Trial Examiner, that the eight Los Angeles Respondent Unions violated Section 8(b)(4)(i)(ii)(B) of the Act by picketing The Chronicle Publishing Company and The San Francisco Printing Company, Inc. in furtherance of their dispute with The Los Angeles Herald-Examiner Division of The Hearst Corporation because these companies are also neutrals to the dispute and separate persons within the meaning of the Act.

3. The Trial Examiner found, and we agree, that the two Respondent San Francisco Unions violated Section 8(b)(i)(B) of the Act by inducing employees of The San Francisco Printing Co., Inc. to strike in support of the Los Angeles Unions' dispute with the Herald-Examiner. We also find that these two Unions violated Section 8(b)(4)(ii)(B), as their inducement of employees of the Printing Company was successful in causing them to refuse to continue to work, thus coercing or restraining the Printing Company.[10]

The Remedy

Having found that the Respondents, with the exception of the Warehousemen's Union, have engaged in additional unfair labor practices within the meaning of the Act, we shall recommend that the Respondents cease and desist therefrom and take appropriate affirmative action.

Amended Conclusions of Law

1. The San Francisco Examiner Division of The Hearst Corporation, and The Los Angeles Herald-Examiner Division of The Hearst Corporation are engaged

---

[10] *Interstate Employers Association*, 139 NLRB 550, 551, footnote 1.

in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The above Divisions, The San Francisco Chronicle Publishing Company, and The San Francisco Printing Company, Inc. are persons engaged in an industry affecting commerce within the meaning of Section 8(b)-(4)(B) and Section 2(6) and (7) of the Act.

3. The Respondents are labor organizations within the meaning of Section 2(5) of the Act.

4. By inducing individuals employed by The San Francisco Examiner Division of The Hearst Corporation, The Chronicle Publishing Company and The San Francisco Printing Company, Inc. to engage in a strike or a refusal in the course of their employment to perform services, with an object of forcing said persons to cease doing business with each other and with their customers and suppliers, the Los Angeles Unions have engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(i)(B) and Section 2(b) and (7) of the Act.

5. By threatening, coercing, and restraining the above persons with an object of forcing said persons to cease doing business with each other and with their customers and suppliers, the Respondent Los Angeles Unions have engaged in unfair labor practices within the meaning of Section 8(b)(4)(ii)(B) and Section 2(6) and (7) of the Act.

6. By inducing individuals employed by The San Francisco Printing Company, Inc., to engage in a strike or refusal in the course of their employment to perform services, with an object of forcing said person to cease doing business with The San Francisco Examiner Division of The Hearst Corporation, with The Chronicle

Publishing Company, and with its customers and suppliers, the Respondent San Francisco Unions have engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(i)(B) and Section 2(6)(7) of the Act.

7. By coercing, and restraining The San Francisco Printing Company, Inc., with an object of forcing said person to cease doing business with the other persons described above, the Respondent San Francisco Unions have engaged in unfair labor practices within the meaning of Section 8(b)(4)(ii)(B) and Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

A. The Respondents Los Angeles Newspaper Guild, Local 69; Los Angeles Web Pressmen's Union No. 18; Los Angeles Stereotypers' Union No. 58; Los Angeles Typographical Union No. 174; International Association of Machinists and Aerospace Workers, District Lodge No. 94; Building Service and Maintenance Employees' Union No. 399; Los Angeles Mailers' Union No. 9; and Los Angeles Paper Handlers' Union No. 3, their officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Inducing or encouraging individuals employed by The San Francisco Examiner Division of The Hearst Corporation, The Chronicle Publishing Company, and The San Francisco Printing Company, Inc., or any other person engaged in commerce or in an industry affecting commerce with whom they have no primary labor dispute, to engage in a strike or refusal in the course

of their employment to perform services, where an object thereof is to force or require the above-named persons to cease doing business with each other or with their customers and suppliers, under circumstances prohibited by Section 8(b)(4)(i)(B) of the Act.

(b) Threatening, restraining, or coercing the above-named persons or any other person engaged in commerce or in an industry affecting commerce with whom they have no primary labor dispute, where an object thereof is to force or require the above-named persons to cease doing business with each other or with their customers and suppliers, under circumstances prohibited by Section 8(b)(4)(ii)(B) of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Post at their business offices and meeting halls in Los Angeles, California, copies of the attached notice marked "Appendix A."[11] Copies of said notice, on forms provided by the Regional Director for Region 21, shall, after being duly signed by the above Respondent Unions, be posted by them immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Unions to insure that said notices are not altered, defaced, or covered by any other material.

(b) Sign and mail to the Regional Director for Region 21 sufficient copies of said notice, on forms pro-

[11]In the event this Order is enforced by a judgment of the United States Court of Appeals the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals enforcing an Order of the National Labor Relations Board."

vided by him, for posting by the San Francisco Examiner, the Chronicle, and the Printing Company, if willing.

(c) Notify the said Regional Director, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

B. Respondents Newspaper and Periodical Drivers' and Helpers' Union, Local 921, and San Francisco-Oakland Newspaper Guild, Local 52 of the American Newspaper Guild, their officers, agents, and representatives shall:

1. Cease and desist from:

(a) Inducing or encouraging individuals employed by The San Francisco Printing Company, Inc., or any other person engaged in commerce or in an industry affecting commerce with whom they have no primary labor dispute to engage in a strike or refusal in the course of their employment to perform services, where an object thereof is to force or require said person to cease doing business with The San Francisco Examiner or Chronicle under circumstances prohibited by Section 8(b)(4)(i)(B) of the Act.

(b) Threatening, restraining, or coercing The San Francisco Printing Company, Inc., or any other persons engaged in commerce or in an industry affecting commerce with whom they have no primary labor dispute, where an object thereof is to force or require said persons to cease doing business with the San Francisco Examiner or Chronicle under circumstances prohibited by Section 8(b)(4)(ii)(B) of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Post at their business offices and meeting halls in San Francisco, California, copies of the attached notice marked "Appendix B."[12] Copies of said notice, on forms provided by the Regional Director for Region 21, shall, after being duly signed by the above Respondent Unions be posted by them immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Unions to insure that said notices are not altered, defaced, or covered by any other material.

(b) Sign and mail to the Regional Director for Region 21 sufficient copies of said notice, on forms provided by him, for posting by The San Francisco Printing Company, Inc., if willing.

(c) Notify the said Regional Director, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C. Aug. 27, 1970.

Edward B. Miller, Chairman
Frank W. McCulloch, Member
Howard Jenkins, Jr., Member
NATIONAL LABOR RELATIONS BOARD

---

[12]In the event this Order is enforced by a judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals enforcing an Order of the National Labor Relations Board."

Member Brown, concurring in part, dissenting in part:

Contrary to the majority, I would affirm the Trial Examiner's finding, for the reasons more fully stated in his Decision, that Respondents' picketing and related appeals to employees of the San Francisco Examiner constituted lawful primary activity outside the ambit of Section 8(b)(4)(B).

The Unions' conduct with respect to the San Francisco Examiner, a separate operating division of the Hearst Corporation, was merely designed to impose economic sanctions upon the Hearst Corporation, in support of basic contract demands during negotiations with the Los Angeles Herald-Examiner, another operating division of the Hearst Corporation. Thus, the question presented is whether a labor organization is precluded, by virtue of Section 8(b)(4)(B), from applying direct economic pressures to a single corporate enterprise in support of its dispute with a separate operating segment of that enterprise? An affirmative answer to this question is not supported by a literal reading of the statute; for, separate operating divisions of a single corporate enterprise, such as the San Francisco Examiner and the Los Angeles Herlad-Examiner, are not within the definition of the term "person" set forth in Section 2(1) of the Act. Furthermore, to extend, by interpretation, the secondary boycott provisions to restrict the scope of the Union activity involved here, not only insulates the "offending employer" from the effects of what essentially is its own dispute, but

runs counter to a consistent line of precedent cautioning against application of Section 8(b)(4)(B) in a fashion which condemns direct pressures in primary labor disputes.[13] As stated in *N.L.R.B. v. International Rice Milling Co.*, 341 U.S. 665, at pp. 672-673:

> . . . Congress did not seek to interfere with the ordinary strike. . . . This is emphasized in Section 13 as follows:
>
> > Nothing in this Act, except as specifically provided herein shall be construed so as to either interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.
>
> By Section 13, Congress has made it clear that Section 8(b)(4), and all other parts of the Act which otherwise might be read so as to interfere with, impede or diminish the union's traditional right to strike may be so read only if such interference, impediment or diminution is "specifically provided for" in the Act. . . . [footnotes omitted]

In my opinion, the majority's position represents a departure from traditional concepts of primary activity, and extends the proscriptions of Section 8(b)(4)(B) to protect the very "person" made "fair game" through

---

[13]See, e.g. *Local 1976, Carpenters v. N.L.R.B. (Sand Door & Plywood Co.)*, 357 U.S. 93, 99; *Local 761, International Union of Electrical, Radio and Machine Workers (General Electric Co.) v. N.L.R.B.*, 366 U.S. 667, 672; *National Woodworkers Mfrs. Assn. v. N.L.R.B.*, 386 U.S. 612, 625-627.

enactment of Sections 13, 2(1) and 8(b)(4)(B) of the Act.[14]

Dated, Washington, D. C. Aug. 27, 1970.

Gerald A. Brown, Member
NATIONAL LABOR RELATIONS
BOARD

---

[14]I disagree with the Trial Examiner's failure to dismiss the allegations based upon the direct appeals to employees of the San Francisco Printing Co. The Printing Co. is half-owned by the San Francisco Examiner and performs various services in the latter's behalf, including the printing of the newspaper. These activities are a vital step in the publication and sale of the *Examiner* and are duties which, as a matter of practice, are normally performed by employees of the newspaper. In these circumstances, I deem immaterial the fact that the Printing Co. is operated by Hearst as a joint venturer with the Chronicle and am of the opinion that the lawful pressures directed by the Examiner were also lawfully extended to employees of the Printing Co.

LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
NOV 16 1971
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

October Term, 1971
No. 71-546

LOS ANGELES NEWSPAPER GUILD, LOCAL 69, *et al.*,
Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

LOS ANGELES HERALD-EXAMINER, DIVISION OF THE HEARST CORPORATION; and SAN FRANCISCO EXAMINER, DIVISION OF THE HEARST CORPORATION,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

BRIEF FOR EMPLOYER RESPONDENTS IN OPPOSITION.

CHARLES G. BAKALY, JR.,
RICHARD C. WHITE,
Counsel for Los Angeles Herald-Examiner and San Francisco Examiner, Divisions of The Hearst Corporation, Respondents.

Of Counsel:
GARRET McENERNEY II,
LAW OFFICES OF GARRETT McENERNEY II,
500 Sansome Street,
San Francisco, Calif. 94111,
STEPHEN P. PEPE,
RICHARD N. FISHER,
O'MELVENY & MYERS,
611 West Sixth Street,
Los Angeles, Calif. 90017.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6622

SUBJECT INDEX

Page

Jurisdiction 1

Statutes Involved 2

Questions Presented 2

Statement 3

Reasons for Denying the Writ 8

I.

The Petition Was Not Timely Filed 8

II.

There Is No Conflict of Decision 12

III.

The Decision Below Is Clearly Correct 14

IV.

There Is No Important Question of Federal Law.. 18

Conclusion 19

Appendix. Court of Appeals' Per Curiam Opinion .....App. p. 1

June 7, 1971 Notice From the Clerk of Court ....App. p. 2

TABLE OF AUTHORITIES CITED

Cases	Page
Bachman Machine Co. v. NLRB, 266 F.2d 599 (8th Cir. 1959)	12
Cole v. Violette, 319 U.S. 581 (1943)	9
Darlington Mfg. Co. v. NLRB, 397 F.2d 760 (4th Cir. 1968)	17
Dept. of Banking v. Pink, 317 U.S. 264 (1942)	10
FTC v. Minneapolis-Honeywell Regulator Co., 344 U.S. 206 (1952)	10, 11
J. G. Roy & Sons Co. v. NLRB, 251 F.2d 771 (1st Cir. 1958)	12
Miami Newspaper Pressmen's Local No. 46 v. NLRB, 322 F.2d 405 (D.C. Cir. 1963)	12, 13, 14, 17, 18
Minnesota Milk Co. v. NLRB, 314 F.2d 761 (8th Cir. 1963)	17
National Maritime Union v. NLRB, 342 F.2d 538 (2d Cir.), cert. denied, 382 U.S. 835 (1956)	18
NLRB v. E. C. Atkins & Co., 331 U.S. 398 (1947)	16, 17
NLRB v. J. E. McCatron, 216 F.2d 212 (9th Cir. 1954)	17
NLRB v. Patterson Menhaden Corp., 389 F.2d 701 (5th Cir. 1968)	17
NLRB v. Milk Drivers Local 584, 341 F.2d 29 (2d Cir.), cert. denied, 382 U.S. 816 (1965)	18
NLRB v. Randolph Electric Membership Corp., 343 F.2d 60 (4th Cir. 1965)	17
NLRB v. Teamsters Local 126, 435 F.2d 288 (7th Cir. 1970)	12

Page

Plumbers Local 298 v. County of Door, 359 U.S. 354 (1959) 15

Sakrete of No. Calif., Inc., 137 NLRB 1220 (1962), aff'd, 332 F.2d 902 (9th Cir. 1964) .. 17

Scofield v. NLRB, 394 U.S. 423 (1969)..... 9

Sheet Metal Workers Local 223 v. Atlas Sheet Metal Co., 384 F.2d 101 (5th Cir. 1967) 12

Teamsters Local 25 v. New York, N. H. & H. R. Co., 350 U.S. 155 (1956) 15

United States v. F & M Schaefer Brewing Co., 356 U.S. 227 (1958) 11

United States v. Shirey, 359 U.S. 255 (1959) 15

Universal Camera Corp. v. NLRB, 340 U.S. 474 (1951) 13

Rules

Federal Rules of Appellate Procedure, Rule 40 9

Statutes

National Labor Relations Act, Sec. 2(1) 14, 15

National Labor Relations Act, Sec. 2(2) 15

National Labor Relations Act, Sec. 8(b)(4) 11, 14, 15

United States Code, Title 28, Sec. 2101(c) 1, 2, 8, 11

IN THE

Supreme Court of the United States

October Term, 1971
No. 71-546

LOS ANGELES NEWSPAPER GUILD, LOCAL 69, *et al.*,
Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

LOS ANGELES HERALD-EXAMINER, DIVISION OF THE HEARST CORPORATION; and SAN FRANCISCO EXAMINER, DIVISION OF THE HEARST CORPORATION,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

BRIEF FOR EMPLOYER RESPONDENTS IN OPPOSITION.

Jurisdiction.

This Court does not have jurisdiction, because the petition was not timely filed in accordance with 28 U.S.C § 2101(c). See Reason I of Reasons for Denying the Writ, *infra.*

Statutes Involved.

The relevant provisions of the National Labor Relations Act, as amended, 29 U.S.C. § 151, *et seq.* (herein the "Act") are set forth in the Petition at pages 3-5.

28 U.S.C. § 2101(c) provides in relevant part:

> "Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. . . ."

Questions Presented.

1. Is there substantial evidence in the record considered as a whole to support the National Labor Relations Board's findings that The Hearst Corporation does not exercise actual active control over either the Los Angeles Herald-Examiner or the San Francisco Examiner and that neither of those two divisions controls the other?

2. May unincorporated divisions of the same corporation be separate "persons" within the meaning of the secondary boycott provisions of the National Labor Relations Act, 29 U.S.C. § 158(b)(4)(B)?

3. Is there substantial evidence in the record considered as a whole to support the National Labor Relations Board's finding of an unfair labor practice?

Statement.*

On December 15, 1967, following the expiration of collective bargaining agreements between the Los Angeles Herald-Examiner, Division of The Hearst Corporation (herein the "Herald-Examiner") and certain of the Petitioner labor organizations (herein the "Los Angeles unions"), the Los Angeles unions commenced an economic strike which has continued until the present time. On January 4, 1968, in furtherance and in support of the strike against the Herald-Examiner, the Los Angeles unions dispatched pickets to San Francisco where they picketed the San Francisco Examiner, Division of The Hearst Corporation (herein the "San Francisco Examiner"); the Chronicle Publishing Company, publisher of the San Francisco Chronicle; and the San Francisco Newspaper Printing Co., Inc., a joint venture of the Chronicle Publishing Company and the San Francisco Examiner.

Certain of the Petitioner labor organizations (herein the "San Francisco unions") represented various employees of the picketed San Francisco employers. Although the San Francisco unions had unexpired collective bargaining agreements with the picketed employers, they nevertheless ordered their members not to cross the Los Angeles unions' picket lines, and as a result, all three San Francisco employers were forced to cease operations on January 5, 1968.

---

*Petitioners have omitted certain material facts from their Statement of the Case; therefore respondents will present an additional statement.

The Hearst Corporation's chief executive officer appoints subsidiary and division heads, including the newspaper publishers. [Tr. 1436-39.]* Upon such appointments, he advises them that:

> "[Y]ou are the executive officer, and you run the business and you run it as if it were yours and yours alone." [Tr. 1439.]

Each division head selects his own personnel and there is no policy or practice of transferring employees among divisions. [Tr. 869, 908, 985.]

Each division head determines an appropriate working cash balance for his respective division. Revenues which exceed the cash balance are remitted to The Hearst Corporation (herein the "Corporation"). [Tr. 1146, 1175, 1231.] Similarly, excess revenues from the corporate subsidiaries are remitted to the Corporation as dividends. [Tr. 1174.] Neither the divisions nor the subsidiaries receive any budgets from the Corporation. [Tr. 910, 1231.] During the National Labor Relations Board (herein the "Board") proceedings there was an exhaustive investigation of all relationships between the Corporation and its divisions, which resulted in a record which is barren of any indication that the Herald-Examiner received any funds whatsoever from the Corporation during the current labor dispute.

There is a Corporation pension plan and a life insurance plan for the various divisions' and subsidiaries' personnel, for whom such benefits are not otherwise available. Participation or non-participation in such plans is determined by each division head and each

---

*The reference [Tr. 1436-39] refers the Court to pages 1436-1439 of the official transcript of the Board hearing. Similar references will be used throughout this brief.

division pays its own costs. [Tr. 1028-31, 1197-1206.] Each division and subsidiary secures and maintains its own local medical and hospitalization plans. [Tr. 1204, 1240.]

There are several services owned by the Corporation which are available to some of its divisions and subsidiaries. One such service is Hearst Enterprises, which operates as a contracting agency for some of the newspapers to purchase their newsprint and ink from non-Hearst sources. [Tr. 1007, 1449.] However, there is no corporate requirement that any division utilize the services of Hearst Enterprises or of any other division or subsidiary of the Corporation. [Tr. 885-89, 1082, 1442.] For example, the Herald-Examiner does not utilize the services of Hearst Enterprises for ink purchases, but instead contracts for its own ink supply. [Tr. 1007.]

Division heads incur operational expenses in any amount. [Tr. 1045, 1073, 1111, 1441.] For capital expenditures in excess of $10,000, division heads advise the Corporation. [Tr. 1045, 1072, 1111, 1124, 1179, 1440.] The purpose of this procedure is to apprise division heads of the availability for sale of used equipment from other divisions or subsidiaries of the Corporation. [Tr. 1440.] For many years, no request for a capital expenditure from a division head has been refused or even modified [Tr. 1238-42, 1442], including capital expenditures by the Herald-Examiner of $1,000,000, $600,000 and $500,000. [Tr. 944, 1043.]

George R. Hearst, Jr. is the publisher of the Herald-Examiner. He and his staff, all of whom he has

selected, manage and administer all the affairs of the Herald-Examiner. [Tr. 845.] The entire work force, including Mr. Hearst, is employed and compensated by the Herald-Examiner. [Tr. 908.] The Herald-Examiner does its own accounting and billing; maintains its own bank account, payroll, and personnel records; and, where permitted by law, prepares and files tax returns in its own name. [Tr. 871, 1021, 1073, 1192.] George R. Hearst, Jr. and his staff select all of the vendors with which the Herald-Examiner deals. [Tr. 894.] They also determine the Herald-Examiner's advertising and circulation rates. [Tr. 862.]

There are no Corporation directives or guidelines relating either to the labor relations policy or any other policy of either the Herald-Examiner or any other division or subsidiary of the Corporation. [Tr. 847, 1074.] George R. Hearst, Jr. and his staff determine all of the Herald-Examiner's labor relations policies, including collective bargaining proposals, responses to union proposals, final approval of collective bargaining agreements, and the handling of grievances, arbitrations, and personnel administration. [Tr. 305, 846.]

George R. Hearst, Jr. has the ultimate responsibility for the paper's content, including its editorial policies. [Tr. 902.] William Randolph Hearst, Jr., who is employed by the Corporation, writes a weekly feature column which the Herald-Examiner usually runs because of its popularity, but it is not required to do so. [Tr. 1009.] Some editorials are prepared by members of

the staff of Mr. W. R. Hearst, Jr., but the Herald-Examiner is not required to use any of them and usually does not. [Tr. 1010.] The publisher of the San Francisco Examiner has followed the recommendation of Mr. W. R. Hearst, Jr. on the sole issue of presidential candidate endorsement. However, the chief executive officer of the Corporation testified that this was only Mr. Hearst's personal recommendation and did not carry the Corporation's imprimatur. [Tr. 1443.]

The Herald-Examiner is not required by the Corporation to do business with any other division or subsidiary of the Corporation. [Tr. 885-89, 1082, 1442.] Of the total amount of money expended by the Herald-Examiner during 1967, over 93 percent was spent for goods, materials or services supplied from non-Hearst sources. [Tr. 917-18.]

Charles Gould is the Publisher of the San Francisco Examiner. Mr. Gould's authority directly parallels that of Mr. George R. Hearst, Jr. [Tr. 256, 873-89, 1064-71, 1129, 1442.] There are no Corporation directives, oral or written, which apply either to labor relations or to any other policies of the San Francisco Examiner. [Tr. 1064-71, 1123.] There is no interchange of employees between the Herald-Examiner and the San Francisco Examiner, nor does either perform any work for the other. The San Francisco Examiner has neither sent any employees to the Herald-Examiner nor performed any work for the Herald-Examiner before or since the strike.

REASONS FOR DENYING THE WRIT.

I.

The Petition Was Not Timely Filed.

Congress has provided in 28 U.S.C. § 2101(c) that a petition for a writ of certiorari to bring any judgment or decree in a civil action before this Court for review must be "applied for within ninety days after the entry of such judgment or decree."

In the instant case oral argument was heard before the Court of Appeals on June 3, 1971. On June 7, 1971, the Court of Appeals issued a *per curiam* opinion. (See Appendix.) On the same date the Clerk for the Court of Appeals mailed to all parties a copy of the *per curiam* opinion and the following notice:

> "An opinion in the above case was filed today, and pursuant to Rule 36 of the Federal Rules of Appellate Procedure a judgment was entered denying petition for review, enforcing Board's order. . . .
>
> "Under Rule 40 you have 14 days to file a petition for rehearing. . . ." (See Appendix.)

Thereafter, the Board performed the ministerial act of forwarding to the Court of Appeals the Board's original order modified only to reflect that it was being enforced as the Court's order. On July 21, the order as modified was filed under the title "Judgment" and entered on the docket sheet as "Filed approved Judgment." Petitioners' filed their Petition on October 18, which was within 90 days of July 21, but more than 90 days from June 7.

As noted above, Petitioners were notified on June 7, 1971, that "judgment was entered" and that they

had 14 days to file a petition for rehearing pursuant to Rule 40 of the Federal Rules of Appellate Procedure. Rule 40 provides that "a petition for rehearing may be filed within 14 days after *entry of judgment*. . . ." (Emphasis added.) Petitioners were thus on notice that the Court of Appeals regarded the June 7, 1971 opinion as a final judgment. Compare *Scofield v. NLRB*, 394 U.S. 423 (1969), where this Court ruled that the petition was timely only because:

> "Petitioners here received a copy of the March 5 opinion, but were given no notice of any entry of judgment on that date as would be required by Rule 36 of the new Federal Rules of Appellate Procedure. . . . Since no notice was given . . . it could not have been clear to petitioner whether there was a March 5 judgment or not. . . ." 394 U.S. at 427.

This Court also considered the issue of untimely filing in *Cole v. Violette*, 319 U.S. 581 (1943) (*per curiam*), where the appeal was filed more than the required ninety days after the order of the Supreme Judicial Court of Massachusetts, but within ninety days of the filing of the rescript with the trial court. In dismissing the appeal as untimely, the Court stated:

> "But in determining what is a final judgment or decree . . . we are not controlled by the designation applied to it in state practice. . . . The order of the Supreme Judicial Court of Massachusetts incorporated in its rescript, was an order of the same nature and with the same incidents as those of the highest courts of other states which we review. It was an order of the court, and one which

> finally disposed of all the issues in the case, leaving nothing to be done but the ministerial act of entering judgment in the trial court. The appeal is dismissed on the ground that it was not applied for within the time provided by law." 319 U.S. at 582.

Accord, Dept. of Banking v. Pink, 317 U.S. 264 (1942).

In *FTC v. Minneapolis-Honeywell Regulator Co.,* 344 U.S. 206 (1952), the Federal Trade Commission, after being reversed by the Court of Appeals, moved the court to revise its decree in an immaterial way. The motion was granted and a second decree entered. The Commission then filed its petition for certiorari more than ninety days from the initial decree but within ninety days from entry of the second decree. In finding the petition untimely, the Court stated:

> "The test is a practical one. The question is whether the lower court, in its second order, has disturbed or revised legal rights and obligations which, by its prior judgment, had been plainly and properly settled with finality." 344 U.S. at 212.

In the instant case, the July 21 Judgment of the Court of Appeals did not disturb or revise in any way its earlier judgment. As noted above, the June 7 *per curiam* opinion granted enforcement of the Board's order; the July 21 Judgment merely set forth the Board's order as the judgment of the Court. No sub-

stantive changes were requested or made in the Board's order.*

Petitioners may contend that because the July 21 Judgment was entitled "Judgment," it should be regarded as the final judgment within the meaning of 28 U.S.C. § 2101(c). A similar argument was disposed of by this Court in *Minneapolis-Honeywell Regulator Co., supra,* as follows:

> "Petitioner puts great emphasis on the fact that the judgment of September 18 was labeled a 'Final Decree' by the Court of Appeals, whereas the word 'Final' was missing from the judgment entered on July 5. But we think the question of whether the time for petitioning for certiorari was to be enlarged cannot turn on the adjective which the court below chose to use in the caption of its second judgment. Indeed, the judgment of July 5 was for all purposes final. It put to rest the questions which the parties had litigated in the Court of Appeals. It was neither 'tentative, informal nor incomplete.'" 344 U.S. at 212-13.

See also *United States v. F & M Schaefer Brewing Co.,* 356 U.S. 227, 233 (1958): "[T]here is no statute or rule that specifies the essential elements of a final judgment, and this Court has held that '[n]o form of

---

*It should be noted that the Board's order is its standard form for secondary boycotts, and closely follows the statutory language of § 8(b)(4). There could be no dispute between the parties as to the text of either the order or the notice once the Court of Appeals determined that there was a secondary boycott. Thus, this case is distinguishable from the usual § 8(a)(1), (3) or (5) case where after an unfair labor practice is found there could be disputes over the order concerning the amount of backpay or affirmative obligation imposed.

words and no peculiar formal act is necessary to evince [the] rendition [of a judgment]'."

In the instant case the June 7 opinion, which appears in the official report of the case at 443 F.2d 1173, put to rest all questions litigated in the Court of Appeals; none of the parties challenged the form of the Board's order, nor did they propose changes in it or petition for rehearing.

It is therefore submitted that the Petition was not timely filed and is accordingly not within the jurisdiction of this Court.

II.

There Is No Conflict of Decision.

It is well settled that unless two commonly owned enterprises are in fact subject to actual common control, each is a separate "person" and is thus entitled to be insulated from labor disputes which arise at the other. *NLRB v. Teamsters Local 126,* 435 F.2d 288, 291 (7th Cir. 1970); *Sheet Metal Workers Local 223 v. Atlas Sheet Metal Co.,* 384 F.2d 101, 105-107 (5th Cir. 1967); *Miami Newspaper Pressmen's Local No. 46 v. NLRB,* 322 F.2d 405 (D.C. Cir. 1963); *Bachman Machine Co. v. NLRB,* 266 F.2d 599 (8th Cir. 1959); *J. G. Roy & Sons Co. v. NLRB,* 251 F.2d 771 (1st Cir. 1958).

In applying the actual common control test in the above-mentioned cases, the Board and the courts have regarded the presence of the following factors as indicia of actual common control: centralized control of labor relations including collective bargaining policies; occupation of the same premises; common management and supervision; integrated operations; economic dependence by one enterprise upon the other; inter-

change of employees and functions; common records and payrolls; and common public images.

The record of the instant case* strongly supports the conclusion of the Board and the Court of Appeals that the Corporation does not exercise actual control over either the Herald-Examiner or the San Francisco Examiner and that neither division controls the other. The facts are very similar to those in *Miami Newspaper Pressmen's Local No. 46 v. NLRB*, 322 F.2d 405 (D.C. Cir. 1963). In that case the union struck the Miami Herald, a newspaper published by a wholly-owned corporate subsidiary of Knight Newspapers, Inc. When the Herald successfully operated behind the picket line, the union extended the dispute from Miami, Florida to Detroit, Michigan by picketing and shutting down the Detroit Free Press, which was published directly by Knight Newspapers, Inc. The principal issue in the case was whether Knight Newspapers, Inc.—the struck parent corporation—was a primary or a secondary employer. In *Miami Pressmen*, as here, each newspaper had its own local manager who was in charge of labor relations; each had its own collective bargaining agreements; each engaged in union contract negotiations without coordination with the other and without direction or instructions from the common owner; there was insubstantial economic dependence; and there was virtually no employee interchange. The con-

---

*The standard for review of Board decisions is that if the Board's findings of fact are supported by substantial evidence on the record considered as a whole, enforcement of the Board's order is required; and an appellate court may not displace the Board's choice between two fairly conflicting views even if it would have decided the issue differently had the matter been before it *de novo*. *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 478-88 (1951).

clusion of the court in that case is equally applicable to the instant case:

> "These two metropolitan daily newspapers appear to have had separate and largely unrelated lives of their own, despite their common ownership. Published hundreds of miles apart in two distinctive urban communities of the United States, each paper went its way under independent direction supplied locally, as they must have done in order to be successfully responsive to the varying needs of their two unrelated readerships. A newspaper reflects in significant measure the peculiar personality of its locale. To the extent that it does so in fact, its commercial success is to that degree correspondingly assured. Wise publishers know this to be true and shape their arrangements and policies accordingly. This appears to be the case here." 322 F.2d at 409.

The only distinction between *Miami Pressmen, supra,* and the instant case is that here both of the commonly owned newspapers are unincorporated divisions of the same corporation.

In sum, the decision of the Court of Appeals in the instant case is not in conflict with other decisions; to the contrary, it is fully consistent with the "actual common control" doctrine which has been adopted by five other circuits.

III.

The Decision Below Is Clearly Correct.

Petitioners' primary contention is that unincorporated divisions of a corporation cannot, as a matter of law, fall within the meaning of the word "person" as defined in § 2(1) and used in § 8(b)(4) of the Act,

because such divisions are part of a "single legal entity." Such a contention is not supported by applicable rules of statutory construction. First, it is noteworthy that in drafting § 2(1) of the Act, Congress did not spell out a rigid or detailed definition of "person." "Person" is defined only by example: "The term 'person' includes one or more individuals, labor organizations, [etc.]. . . ." Congressional choice of the introductory word "includes" demonstrates that the entities listed in § 2(1) are illustrative rather than exclusive. In *Plumbers Local 298 v. County of Door*, 359 U.S. 354 (1959), this Court held that a county could be a "person" notwithstanding the fact that political subdivisions are not expressly included in the definition of "person" in § 2(1) and are expressly excluded from the definition of "employer" in § 2(2). *Accord, Teamsters Local 25 v. New York, N. H. & H. R. Co.*, 350 U.S. 155, 160 (1956) ("[S]ince railroads are not excluded from the Act's definition of 'person,' they are entitled to Board protection. . . ."); *Cf. United States v. Shirey*, 359 U.S. 255, 257 (1959) (Republican Party held to be a "person").

Second, the Board's construction of the word "person" was correctly based upon considerations of substance and economic realities rather than technical form. The cases involving the interpretation of the terms "employer" and "employee" in §§ 2(1) and (2) of the Act are instructive. There, as with the word "person" in the instant case, Congress provided no rigorous definitions. "Employer" is defined in the Act only in terms of "any *person* acting as the agent of an

employer. . . ." This Court analyzed these terms as follows:

> ". . . Realizing that labor disputes and industrial strife are not confined to those who fall within ordinary legal classifications, Congress has not attempted to spell out a detailed or rigid definition of an employee or an employer. . . . As we recognized in the *Hearst* case, [*NLRB v. Hearst Publications*, 322 U.S. 111 (1944)] the terms 'employee' and 'employer' in this statute carry with them more than the technical and traditional common law definitions. They also draw substance from the policy and purposes of the Act, the circumstances and background of particular employment relationships, and all the hard facts of industrial life.
>
> "And so the Board in performing its delegated function of defining and applying these terms, must bring to its task an appreciation of economic realities, as well as a recognition of the aims which Congress sought to achieve by this statute. This does not mean that it should disregard the technical and traditional concepts of 'employee' and 'employer.' But it is not confined to those concepts. It is free to take account of the more relevant economic and statutory considerations. And a determination by the Board based in whole or in part upon those considerations is entitled to great respect by a reviewing court due to the Board's familiarity with the problems and its experience in the administration of the Act." *NLRB v. E. C. Atkins & Co.*, 331 U.S. 398, 403-404 (1947). (Emphasis added.)

Accord, NLRB v. Randolph Electric Membership Corp., 343 F.2d 60, 62 (4th Cir. 1965); *Minnesota Milk Co. v. NLRB*, 314 F.2d 761, 765 (8th Cir. 1963).

Pursuant to these principles, the Board and the courts have consistently ignored the form of business enterprises and looked instead to the underlying economic realities to effectuate the purposes of the Act.* Indeed, the actual common control test as set forth in *Miami-Pressmen, supra,* and as applied in the instant case is clearly adopted to facilitate the Board's task of determining the economic realities and "hard facts of industrial life" as suggested by the Court in *Atkins, supra.*

Petitioners also argue, without citation of authority, that the decision of the Board and Court of Appeals is wrong because "the unions quite obviously were not picketing for the purpose of forcing the Examiner to cease doing business with the Herald-Examiner, nor because the Examiner was doing business with the Herald-Examiner." (Petition, p. 16) However, the picketing did result in a cessation of business among the respective San Francisco employers, as well as with their respective customers, suppliers, and merchan-

---

*See, *e.g., Sakrete of No. Calif., Inc.*, 137 NLRB 1220 (1962), *aff'd*, 332 F.2d 902, 905-908 (9th Cir. 1964) (Two corporations treated as one for jurisdictional purposes because of common control). Similarly, in unfair labor practice cases the responsibility for unfair labor practices is coextensive with actual control of labor policies, even if this means disregarding corporate form. See, *e.g., Darlington Mfg. Co. v. NLRB*, 397 F.2d 760, 762-66 (4th Cir. 1968) (Order directed against both employer and its parent corporation); *NLRB v. Patterson Menhaden Corp.*, 389 F.2d 701 (5th Cir. 1968) (Two corporations found to be a single employer); *NLRB v. J. E. McCatron*, 216 F.2d 212 (9th Cir. 1954) (Two partnerships with common labor relations treated as a single employer).

disers. It is well established by both Board and court decisions that picketing for the object of causing secondary employers to cease doing business with each other is sufficient to invoke the application of §8(b)(4)(B) of the Act. The disruption of business relationships need *not* be between the primary and secondary employer. *National Maritime Union v. NLRB,* 342 F.2d 538, 542-43 (2d Cir.), *cert. denied,* 382 U.S. 835 (1956); *NLRB v. Milk Drivers Local 584,* 341 F.2d 29, 32 (2d Cir.), *cert. denied,* 382 U.S. 816 (1965); *Miami Newspaper Pressmen's Local No. 46 v. NLRB,* 322 F.2d 405, 410 (D.C. Cir. 1963).

IV.

There Is No Important Question of Federal Law.

The instant case is an ordinary secondary boycott case governed by the "actual common control" doctrine which has been adopted not only by the Board but by all courts which have had occasion to consider it. Therefore, contrary to Petitioners' assertions, there is no lack of either standards or guidelines for determining whether related employers are primary or secondary. The only interesting aspect of the case is that the Board applied the actual common control test to divisions of the same corporation just as it does to wholly-owned subsidiary corporations.

A contrary decision, far from simplifying or clarifying the law of secondary boycotts, would only add a rule of formalism to the law, making protection from secondary boycotts hinge upon the technical legal form under which an enterprise does business. It is submitted that this case does not present an important federal question inasmuch as an employer could avoid

the adverse application of a decision contrary to the Court of Appeals by merely creating a corporate shell for an otherwise autonomous unincorporated division.

Conclusion.

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Dated: November 15, 1971.

Respectfully submitted,

CHARLES G. BAKALY, JR.,
RICHARD C. WHITE,
Counsel for Los Angeles Herald-Examiner and San Francisco Examiner, Divisions of The Hearst Corporation, Respondents.

Of Counsel:

GARRET MCENERNEY II,
LAW OFFICES OF GARRET MCENERNEY II,

STEPHEN P. PEPE,
RICHARD N. FISHER,
O'MELVENY & MYERS.

APPENDIX.

UNITED STATES COURT OF APPEALS, FOR THE NINTH CIRCUIT.

Los Angeles Newspaper Guild Local 69, et al.,	)	
Petitioners,	)	
vs.	)	Filed
National Labor Relations Board,	)	Jun 7, 1971
Respondent.	)	Wm. B.
and	)	Luck, Clerk
Los Angeles Herald Examiner, Division of the Hearst Corporation; and San Francisco Examiner, Division of the Hearst Corporation,	)	No. 26,534
Intervenors.	)	

On Petition for Review and Cross Application for Enforcement of an Order of the National Labor Relations Board.

Before: CHAMBERS, ELY and WRIGHT, Circuit Judges.

Per curiam:

The petition for review is denied.

The Board's cross application for enforcement is granted. See the Board's opinion, reported at 185 NLRB No. 25.

Office of the Clerk

United States Court of Appeals for the Ninth Circuit
U. S. Court of Appeals and Post Office Building
7th & Mission Streets, P. O. Box 547
San Francisco, California 94101

June 7, 1971

re: No. 26534 Los Angeles Newspaper Guild vs. NLRB and Los Angeles Herald Examiner, etc.

Dear Sir:

An opinion in the above case was filed today, and pursuant to Rule 36 of the Federal Rules of Appellate Procedure a judgment was entered denying petition for review, enforcing Board's order the judgment or order of the court below (or administrative agency).

Under Rule 40 you have 14 days to file a petition for rehearing. Unless such a petition is filed or the court otherwise orders, the mandate will issue 21 days from today, Rule 41(a). A petition for rehearing *must* comply with Rules 32(b) and 40.

Very truly yours,

William B. Luck,
Clerk of Court

LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
OCT 12 1971
E. ROBERT SEAVER, CLERK

No. 71-546

In the Supreme Court of the United States

OCTOBER TERM, 1971

LOS ANGELES NEWSPAPER GUILD, LOCAL 69, ET AL.,
PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

PETER G. NASH,
General Counsel,
NORTON J. COME,
Assistant General Counsel,
LINDA SHER,
Attorney, National Labor Relations Board,
Washington, D.C. 20570.

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-546

LOS ANGELES NEWSPAPER GUILD, LOCAL 69, ET AL.,

PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The *per curiam* opinion of the court of appeals (Pet. App 11) is reported at 443 F. 2d 1173.[1] The Board's decision and order (Pet. App. 12-29)[2] are reported at 185 NLRB No. 25.

[1] An earlier opinion of the court of appeals, affirming a temporary injunction which had been obtained under Section 10 (l) of the National Labor Relations Act, 29 U.S.C. 160(l), is reported at 412 F. 2d 541.

[2] The decision of the Trial Examiner is not included in the appendix to the petition; it is printed in the Volume of Pleadings in the court below, referred to herein as "R."

449-824--71

JURISDICTION

The judgment of the court of appeals (Pet. App. 1–5) was entered on July 21, 1971. The petition for a writ of certiorari was filed on October 18, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the National Labor Relations Board properly found that the Los Angeles Herald-Examiner and the San Francisco Examiner, though divisions of Hearst Corporation, operated sufficiently independent of each other and of the corporation to constitute separate "persons" for purposes of Section 8(b)(4)(B), the secondary boycott provision, of the National Labor Relations Act.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth at Pet. 3–5.

STATEMENT

On December 15, 1967, during the course of a labor dispute, eight Los Angeles unions struck the Los Angeles Herald-Examiner, a division of Hearst Corporation (Pet. App. 13–14). On January 5, 1968, in furtherance of the strike, the Los Angeles unions picketed the San Francisco Examiner, a separate division of Hearst, the San Francisco Chronicle, and the

San Francisco Printing Company[3] (Pet. App. 14; Tr. 55–57, 160, 163).[4]

The Los Angeles unions requested support from two San Francisco unions which, in turn, asked their members, who were employees of the Printing Company, to honor the picket lines. Their members complied, causing a work stoppage at the Printing Company which resulted in suspension of publication of the San Francisco Examiner and the Chronicle (Pet. App. 14).

The newspapers then initiated an unfair labor practice proceeding. Following a hearing, the Board concluded that, by picketing the San Francisco Examiner, the Chronicle, and the Printing Company, with which they had no dispute, the Los Angeles unions violated Section 8(b)(4)(B) of the Act. It also concluded that the San Francisco unions violated Section 8(b)(4)(B) by inducing the employees of the Printing Company to strike in support of the Los Angeles unions' dispute with the Herald-Examiner (Pet. App. 20–21). Essential to its determination that the pressure exerted against the San Francisco Examiner was secondary, and thus unlawful, was the Board's finding

---

[3] The Printing Company is a joint venture of Hearst and the Chronicle which performs a variety of non-editorial functions for them in connection with the publication of their newspapers—such as printing, distribution, accounting, collection of revenue, advertising, and the processing of subscriptions (R. 82).

[4] "Tr." refers to the transcript of the hearings before the Board, which is included in Volume II of the record in the court of appeals.

that the Los Angeles Herald-Examiner and the San Francisco Examiner are separate "persons" within the meaning of Section 8(b)(4)(B) of the Act (Pet. App 15–20).[5] The evidence relevant to this finding is as follows:

The Hearst Corporation, a conglomerate consisting of 31 incorporated subsidiaries and 20 unincorporated divisions, contains diversified enterprises ranging from operation of ranches and timberland to publication of newspapers and magazines (Pet App. 16, n. 6). The chief executive of Hearst is its president, Richard Berlin, whose responsibilities include the appointment of all divisional heads; these appointees are given the title of "Publisher" when they direct a newspaper division (R. 81). The chairman of Hearst's board of directors is William Randolph Hearst, Jr., the son of the founder of the Hearst newspaper chain; he chairs an "Editorial Board" which prepares editorials and feature stories (R. 81–82).

The Los Angeles Herald-Examiner and the San Francisco Examiner, newspaper divisions of Hearst, operate independently of each other and of the parent corporation. Thus, each Publisher, together with the staff he selects, bears exclusive responsibility for the daily operations of his newspaper (Pet. App. 16; Tr. 230, 903–905, 1071). The Publisher determines the size of his newspaper's workforce, the salaries of his subordinates, and has sole responsibility in deciding whom to hire, promote, and fire (Pet. App. 16; Tr. 845–846, 1092–1094). His autonomy extends to the

[5] Petitioners do not here contest the unfair labor practice findings relating to the Chronicle and the Printing Company.

formulation of editorial policy, as well as determining policy and rates with respect to labor relations, advertising and circulation (Pet. App. 16–17; Tr. 846–848, 230, 1087–1089, 1096–1097, 862–864, 902, 1115).[6] For example, George Hearst, Jr., the Publisher of the Herald-Examiner, in consultation with his staff, and without participation by Hearst executives, negotiates and executes all collective bargaining agreements with the unions representing his employees (Tr. 847–849).

The Herald-Examiner and the San Francisco Examiner do not have the same labor policies; the former establishes its labor policy independent of any bargaining association, while the latter is bound by the policies of the multi-employer bargaining association of which it is a member (Tr. 1062–1068, 1134–1135). There is no interchange of employees between the two newspaper divisions, neither performs any work for the other (Pet. App. 16–17; R. 84; Tr. 274, 295–298, 869), and they each use different printing firms (R. 84; Tr. 432–433, 852, 855, 860, 865, 1099).

Moreover, each division maintains its own financial records and accounting system, subject only to uniform reporting requirements imposed by Hearst for tax purposes, and to apprising Hearst of its financial condition (Pet. App. 17; R. 85; Tr. 1167, 1169). Each maintains separate payrolls and bank accounts (R. 84). Each division determines for itself how large a

[6] The Publisher and his staff also decide with whom the division will do business on a daily basis, whether or not to use the services of other Hearst enterprises, including the Editorial Board, and whether and from whom to purchase equipment, supplies, features, and services (Pet. App. 17; R. 84; Tr. 859–862, 872–874, 883, 893–894, 957, 1110).

working cash balance it will maintain,[7] treating the surplus over working capital as operating profits which are periodically remitted to the Hearst home office (R. 85; Tr. 1176–1178).

Although the separate divisions may incur operating expenses in any amount without consulting Hearst (Tr. 1074), it is their practice to submit for approval—to either the Hearst Board of Directors or its Financial Committee—all capital expenditures in excess of $10,000 (R. 85; Tr. 1045–1048, 1180–1188). However, these expenditure requests have, without exception, been approved by the Board of Directors (Pet. App. 17; Tr. 1238, 1241–1242, 1441–1442). Indeed, without any modification of such requests, the San Francisco Examiner and Herald-Examiner have sought and obtained millions of dollars for capital expenditures in recent years, including more than a million dollars for the construction of a new plant for the San Francisco Examiner (R. 86; Tr. 1043–1045, 1072–1074, 1187–1188).

On the basis of these facts, the Board found that Hearst "does not exercise actual, or active control over these divisions [the San Francisco Examiner and the Herald-Examiner] which operate independently of the Corporation and each other as separate autonomous newspaper enterprises" (Pet. App. 17). It noted that it has held, with court approval, that "separate corporate subsidiaries are separate persons, each en-

[7] With such working capital, each division pays local creditors with its own checks (Tr. 1070), and pays local taxes as a separate entity (Tr. 1080, 1082).

titled to the protection of Section 8(b)(4)(B) from the labor disputes of the other, if neither the subsidiaries nor the parent exercises actual or active, as opposed to merely potential, control over the day-to-day operations or labor relations of the other" (Pet. App. 16). The Board (with one member dissenting) concluded that the same principle was applicable here; for, to deprive the two newspapers "of the protection of the statute on the technical ground that they are merely divisions of the Corporation," rather than corporate subsidiaries, "would exalt form over substance, a result which we are convinced is not required by the statute" (Pet. App. 17–18). It therefore ordered the unions to cease their unfair labor practice activity, and to post appropriate notices (Pet. App. 23–26).

The court of appeals, in a *per curiam* opinion, enforced the Board's order (Pet. App. 11).

ARGUMENT

Section 8(b)(4)(B) of the National Labor Relations Act makes it an unfair labor practice for a union to exert strike pressure for an object of "forcing or requiring any person * * * to cease doing business with any other person" (Pet. 4). The unions, in furtherance of a dispute with the Los Angeles Herald-Examiner, exerted pressure on the San Francisco Examiner. Had the Herald-Examiner and the San Francisco Examiner been separate corporate subsidiaries of Hearst, they would be entitled to be treated as separate persons for purposes of Section

8(b)(4)(B).[8] To reach a contrary conclusion in this case on the ground that we deal here with separate and autonomous divisions rather than separate subsidiary corporations, is, as the Board concluded, to exalt form over substance, without in any way furthering the purposes underlying Section 8(b)(4)(B). The decision below, sustaining the Board's position, is correct and is not in conflict with that of any other court of appeals; there is thus no cause for review by this court.[9]

---

[8] The "Board and the courts have consistently and repeatedly held that common ownership alone does not suffice [to remove the protective shield of Section 8(b)(4)(B)]. There must be something more in the form of common control, as it is usually phrased, denoting an actual, as distinct from merely a potential, integration of operations and management policies. Two business enterprises, although commonly owned, do not for that reason alone become so allied with each other as to lift the congressional ban upon the extension of labor strife from the one to the other." *Miami Newspaper Printing Pressmen's Local No. 46* v. *National Labor Relations Board* (*Knight Newspapers, Inc.*), 322 F. 2d 405, 408–409 (C.A. D.C.). Accord: *J. G. Roy & Sons Co.* v. *National Labor Relations Board*, 251 F. 2d. 771, 773–774 (C.A. 1); *Bachman Machine Co.* v. *National Labor Relations Board*, 266 F. 2d 599, 605 (C.A. 8); *Drivers, Chauffeurs and Helpers Local 639, etc.* (*Poole's Warehousing, Inc.*), 158 NLRB 1281, 1285–1286.

[9] Petitioners' additional contention (Pet. 15) that "the facts of this case * * * preclude a finding * * * that the Examiner is a wholly unconcerned neutral * * *" raises only an evidentiary issue, which likewise does not warrant review by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

PETER G. NASH,
General Counsel,
NORTON J. COME,
Assistant General Counsel,
LINDA SHER,
Attorney,
National Labor Relations Board.

NOVEMBER 1971.

U.S. GOVERNMENT PRINTING OFFICE: 1971